MONTANA LEGISLATIVE HISTORY

Chapter 752 1991

Bill H 539 S _____ Original bill & history ✓ C

H. Committee on Natural Resources		S. Committee on Natural Resources	
Hearing Date(s) 2-13	✓ C	Hearing Date(s) 3-11	C
_____	___ C	_____	___ C
_____	___ C	_____	___ C
_____	___ C	_____	___ C
Date Out 2/20	✓ C	3/27	C

Did this bill originate in an interim committee? ___ Yes ___ No

Committee _____ Report _____

HOUSE BILL NO. 539

INTRODUCED BY DAILY, RANEY

IN THE HOUSE

FEBRUARY 1, 1991	INTRODUCED AND REFERRED TO COMMITTEE ON NATURAL RESOURCES.
	FIRST READING.
FEBRUARY 21, 1991	COMMITTEE RECOMMEND BILL DO PASS AS AMENDED. REPORT ADOPTED.
FEBRUARY 22, 1991	PRINTING REPORT.
FEBRUARY 23, 1991	SECOND READING, DO PASS AS AMENDED.
FEBRUARY 25, 1991	ENGROSSING REPORT.
FEBRUARY 26, 1991	THIRD READING, PASSED. AYES, 97; NOES, 2.
	TRANSMITTED TO SENATE.

IN THE SENATE

FEBRUARY 27, 1991	INTRODUCED AND REFERRED TO COMMITTEE ON NATURAL RESOURCES.
	FIRST READING.
MARCH 27, 1991	COMMITTEE RECOMMEND BILL BE CONCURRED IN. REPORT ADOPTED.
APRIL 3, 1991	SECOND READING, CONCURRED IN.
APRIL 4, 1991	THIRD READING, CONCURRED IN. AYES, 45; NOES, 5.
	RETURNED TO HOUSE.

IN THE HOUSE

APRIL 4, 1991	RECEIVED FROM SENATE.
	SENT TO ENROLLING.
APRIL 8, 1991	REPORTED CORRECTLY ENROLLED.
APRIL 11, 1991	SIGNED BY SPEAKER.

IN THE SENATE

APRIL 11, 1991 — SIGNED BY PRESIDENT.

IN THE HOUSE

APRIL 11, 1991 — DELIVERED TO GOVERNOR.

APRIL 16, 1991 — RETURNED FROM GOVERNOR WITH RECOMMENDED AMENDMENTS.

APRIL 19, 1991 — SECOND READING, GOVERNOR'S AMENDMENTS CONCURRED IN.

IN THE SENATE

APRIL 20, 1991 — SECOND READING, GOVERNOR'S AMENDMENTS CONCURRED IN.

APRIL 22, 1991 — THIRD READING, GOVERNOR'S AMENDMENTS CONCURRED IN.

RETURNED TO HOUSE.

IN THE HOUSE

APRIL 22, 1991 — SENT TO ENROLLING.

REPORTED CORRECTLY ENROLLED.

HOUSE BILL NO. 539

INTRODUCED BY Hall Raney

A BILL FOR AN ACT ENTITLED: "AN ACT TO GENERALLY REVISE THE STATE COMPREHENSIVE ENVIRONMENTAL CLEANUP AND RESPONSIBILITY ACT; REQUIRING APPROVAL OF A CONSENT DECREE BY THE LOCAL GOVERNING BODY; PROVIDING FOR PERFORMANCE BONDS TO ENSURE COMPLIANCE WITH AGREEMENTS AND TO PROVIDE FOR LONG-TERM MAINTENANCE OF REMEDIAL ACTION SITES; REQUIRING A RESPONSE TO WRITTEN COMMENTS OR COMMENTS RECEIVED AT A PUBLIC HEARING ON A PROPOSED ORDER OR DECREE; CLARIFYING THAT ADMINISTRATIVE COSTS MUST BE RECOVERED WHEN POSSIBLE; AND AMENDING SECTIONS 75-10-704, 75-10-713, 75-10-714, 75-10-719, 75-10-721, AND 75-10-723, MCA."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 75-10-704, MCA, is amended to read:

"75-10-704. Environmental quality protection fund. (1) There is created in the state special revenue fund an environmental quality protection fund to be administered as a revolving fund by the department. The department is authorized to expend amounts from the fund necessary to carry out the purposes of this part.

(2) The fund may be used by the department only to carry out the provisions of this part and for remedial actions taken by the department pursuant to this part in response to a release of hazardous or deleterious substances.

(3) The department shall:

(a) establish and implement a system for prioritizing sites for remedial action based on potential effects on human health and the environment; and

(b) investigate, negotiate, and take legal action, as appropriate, to identify responsible parties, to obtain the participation and financial contribution of responsible parties for the remedial action, to achieve remedial action, and to recover costs and damages incurred by the state.

(4) There must be deposited in the fund:

(a) all penalties, forfeited performance bonds, natural resource damages, and remedial action costs recovered pursuant to 75-10-715;

(b) all administrative penalties assessed pursuant to 75-10-714 and all civil penalties assessed pursuant to 75-10-711(5);

(c) funds appropriated to the fund by the legislature; and

(d) funds received from the interest income of the resource indemnity trust fund pursuant to 15-38-202.

(5) Whenever a legislative appropriation is insufficient to carry out the provisions of this part and

INTRODUCED BILL
HB 539

additional money remains in the fund, the department shall seek additional authority to spend money from the fund through the budget amendment process provided for in Title 17, chapter 7, part 4.

(6) Whenever the amount of money in the fund is insufficient to carry out remedial action, the department may apply to the governor for a grant from the environmental contingency account established pursuant to 75-1-1101.

(7) The department shall submit to the legislature at the beginning of each regular session a complete financial report on the fund, including a description of all expenditures made since the preceding report."

Section 2. Section 75-10-713, MCA, is amended to read:

"**75-10-713. Public notice of administrative order or consent decree** -- written comments -- hearing -- response. (1) Except as provided in 75-10-712, before final approval by the director of the department of any administrative order on consent issued pursuant to 75-10-711 or before judicial approval of a consent decree issued pursuant to this part, the department shall:

(a) publish a notice and brief description of the proposed order or decree in a daily newspaper of general circulation in the area affected and make copies of the proposal available to the public;

(b) provide at least 30 days (or whatever additional

time the department may in its discretion grant upon written request) for submission of written comments regarding the proposed order or decree and~~,upon written request by 10 or more persons or by a group having 10 or more members (but not including a liable person),~~ conduct a public meeting hearing at or near the facility for the purpose of receiving verbal comment regarding the proposed order or decree; and

(c) consider and respond to written or verbal comments properly submitted during the comment period or at the public meeting hearing; and

(d) obtain the approval of the governing body in the affected area.

(2) Upon making a final decision regarding the proposed order or decree, the department shall publish notice, as provided under subsection (1), and make copies of the approved order or decree available to the public. The order or decree must contain a concise statement of the principal reasons for and against its adoption, incorporating in the order or decree the reasons for overruling the considerations urged against it. If no written or verbal comments are received, the department may omit the statement of reasons."

Section 3. Section 75-10-714, MCA, is amended to read:

"**75-10-714. Administrative penalties.** (1) In lieu of proceeding under 75-10-711(5), the department may assess

penalties of not more than $1,000 per day per violation against a person liable under 75-10-715(1) for a release or threat of release who has failed or refused to comply with an order issued by the department pursuant to 75-10-711(4) or against a person who has failed or refused to comply with an order issued by the department pursuant to 75-10-707(5).

(2) In determining the amount of any penalty assessed pursuant to this section, the department shall take into account the costs it has incurred; the nature, circumstances, extent, and gravity of the noncompliance; and, with respect to the person liable under 75-10-715(1), his ability to pay; any prior history of such violations; the degree of culpability; the economic benefit or savings, if any, resulting from the noncompliance; and any other matters as justice may require.

(3) An administrative penalty may not be collected pursuant to this section unless the person charged with the noncompliance is given notice and opportunity for a hearing with respect to the noncompliance. The notice and opportunity for a hearing must conform to the requirements of Title 2, chapter 4, part 6.

(4) A person against whom a penalty is assessed under this section may obtain judicial review of the penalty as provided for in Title 2, chapter 4, part 7.

(5) Administrative penalties payable under this section

must be deposited in the environmental quality protection fund established in 75-10-704."

Section 4. Section 75-10-719, MCA, is amended to read:

"75-10-719. Settlement -- bar to contribution liability. (1) A person who has resolved his liability to the state arising under 75-10-715 or section 107(a)(1) through (a)(4) of CERCLA 42 U.S.C. 9607(a)(1) through (a)(4), in an administrative or judicially approved settlement is not liable for claims for contribution regarding matters addressed in the settlement. The settlement does not discharge any of the other potentially liable persons unless its terms provide a discharge. The terms of the settlement may reduce the potential liability of the other potentially liable persons by the amount of the settlement.

(2) If the state has obtained less than complete relief from a person who has resolved his liability to the state in an administrative or judicially approved settlement, the state may bring an action against any other person who has not resolved his liability.

(3) A person who has resolved, in whole or in part, his liability to the state for the release or for remedial action costs in an administrative or judicially approved settlement may seek contribution from a person who is not party to a settlement referred to in subsection (1).

(4) Whenever practicable and in the public interest, as determined by the director of the department, the department may, as promptly as possible, reach a final settlement with a person liable under 75-10-715 in an administrative or civil action under 75-10-711 if ~~such~~ the settlement involves only a minor portion of the response costs at the facility concerned and, in the judgment of the department, the conditions in either of the following subsection (4)(a) or (4)(b) are met:

(a) Both of the following are minimal in comparison to other hazardous or deleterious substances at the facility:

(i) the amount of the hazardous or deleterious substances contributed by that person to the facility;

(ii) the toxic or other hazardous effects of the substances contributed by that person to the facility.

(b) (i) The person:

(A) is the owner of the real property on or in which the facility is located;

(B) did not conduct or permit the generation, transportation, storage, treatment, or disposal of any hazardous or deleterious substance at the facility; and

(C) did not contribute to the release or threat of release of a hazardous or deleterious substance at the facility through any action or omission.

(ii) This subsection (4)(b) does not apply if the person

purchased the real property with actual or constructive knowledge that the property was used for the generation, transportation, storage, treatment, or disposal of any hazardous or deleterious substance.

(5) As part of an administrative or judicially approved settlement agreement, the department shall require the posting of a bond, in an amount determined by the department, to ensure the long-term maintenance of the remedial action site."

Section 5. Section 75-10-721, MCA, is amended to read:

"75-10-721. Degree of cleanup required -- permit exemption -- performance bond. (1) A remedial action performed under this part must attain a degree of cleanup of the hazardous or deleterious substance and control of a threatened release or further release of that substance that assures present and future protection of public health, safety, and welfare and of the environment.

(2) In approving or carrying out remedial actions performed under this part, the department:

(a) shall require cleanup consistent with applicable state or federal environmental requirements, criteria, or limitations;

(b) shall consider and may require cleanup consistent with substantive state or federal environmental requirements, criteria, or limitations that are well-suited

to the site conditions; and

(c) shall select remedial actions that, at a minimum, protect public health, safety, and welfare and the environment and that:

(i) use permanent solutions;

(ii) use alternative treatment technologies or resource recovery technologies to the maximum extent practicable; and

(iii) are cost-effective, taking into account the total short- and long-term costs of the actions, including the cost of operation and maintenance activities for the entire period during which the activities will be required.

(3) The department may exempt any portion of a remedial action that is conducted entirely on site from a state or local permit that would, in the absence of the remedial action, be required if the remedial action is carried out in accordance with the standards established under subsection (1) and this part.

(4) The department may require a performance bond from a liable person or a remedial action contractor in an amount that the department determines will ensure attainment of the degree of cleanup required by subsections (1) and (2)."

Section 6. Section 75-10-723, MCA, is amended to read:

"**75-10-723. Agreements to perform remedial action.** (1) To expedite effective remedial actions and minimize litigation, the department, in its discretion and whenever

practicable and in the public interest, may negotiate and enter into an agreement with any person, including the owner or operator of the facility from which a release emanates, to perform a remedial action if the department determines that the action will be properly done by the person. The agreement must contain a provision requiring the posting of a performance bond, as provided in 75-10-719(5), and any terms and conditions that the department in its discretion determines to be appropriate.

(2) Whenever the department enters into an agreement under this section for remedial action or for assessment or payment of natural resource damages, the agreement must be filed in an appropriate district court as a consent decree and must be available for public comment for at least 30 days.

(3) A decision of the department to enter into or not enter into agreements under this section is not subject to judicial review."

NEW SECTION. **Section 7. Severability.** If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications."

-End-

HB 538 INTRODUCED BY BRADLEY, ET AL.
REGULATE PRICE OF RETAIL MOTOR FUEL AT WHOLESALE AND RETAIL LEVELS
BY REQUEST OF MARKET MOTOR FUELS, JOINT INTERIM SUBCOMMITTEE ON

2/01	INTRODUCED		
2/01	REFERRED TO BUSINESS & ECONOMIC DEVELOPMENT		
2/01	FIRST READING		
2/01	FISCAL NOTE REQUESTED		
2/07	FISCAL NOTE RECEIVED		
2/08	FISCAL NOTE PRINTED		
2/15	HEARING		
2/19	COMMITTEE REPORT—BILL PASSED AS AMENDED		
2/20	REVISED FISCAL NOTE REQUESTED		
2/23	2ND READING PASSED AS AMENDED	74	25
2/25	REVISED FISCAL NOTE PRINTED		
2/25	REVISED FISCAL NOTE RECEIVED		
2/26	3RD READING PASSED	67	31
	TRANSMITTED TO SENATE		
2/27	FIRST READING		
2/27	REFERRED TO BUSINESS & INDUSTRY		
3/22	HEARING		
3/27	MINORITY COMMITTEE REPORT ADOPTED—BILL PASSED AS AMENDED	28	21
4/01	2ND READING CONCURRED	29	20
4/02	3RD READING FAILED	25	25
4/03	RECONSIDERED PREVIOUS ACTION	31	18
4/04	3RD READING CONCURRED	32	18
	RETURNED TO HOUSE WITH AMENDMENTS		
4/09	2ND READING AMENDMENTS CONCURRED	87	7
4/10	3RD READING AMENDMENTS CONCURRED	87	11
4/16	SIGNED BY SPEAKER		
4/16	SIGNED BY PRESIDENT		
4/16	TRANSMITTED TO GOVERNOR		
4/19	SIGNED BY GOVERNOR		
	CHAPTER NUMBER 499	EFFECTIVE DATE: 4/19/91	

HB 539 INTRODUCED BY DAILY, ET AL.
GENERALLY REVISE STATE COMPREHENSIVE ENVIRONMENTAL CLEANUP AND RESPONSIBILITY ACT

2/01	INTRODUCED		
2/01	REFERRED TO NATURAL RESOURCES		
2/01	FIRST READING		
2/13	HEARING		
2/21	COMMITTEE REPORT—BILL PASSED AS AMENDED		
2/23	2ND READING PASSED AS AMENDED	97	1
2/26	3RD READING PASSED	97	2
	TRANSMITTED TO SENATE		
2/27	FIRST READING		
2/27	REFERRED TO NATURAL RESOURCES		
3/11	HEARING		
3/27	COMMITTEE REPORT—BILL CONCURRED		
4/03	2ND READING CONCURRED	48	2
4/04	3RD READING CONCURRED	45	5
	RETURNED TO HOUSE		
4/11	SIGNED BY SPEAKER		
4/11	SIGNED BY PRESIDENT		
4/11	TRANSMITTED TO GOVERNOR		
4/16	RETURNED TO HOUSE WITH GOVERNOR'S AMENDMENTS		
4/19	2ND READING GOVERNOR'S AMENDMENTS CONCURRED	96	0
	TRANSMITTED TO SENATE		
4/20	2ND READING GOVERNOR'S AMENDMENTS CONCURRED	49	0
4/22	3RD READING GOVERNOR'S AMENDMENTS CONCURRED	48	0
	RETURNED TO HOUSE		
4/25	SIGNED BY SPEAKER		
4/29	SIGNED BY PRESIDENT		
5/02	TRANSMITTED TO GOVERNOR		
5/15	SIGNED BY GOVERNOR		
	CHAPTER NUMBER 752	EFFECTIVE DATE: 10/01/91	

HB 540 INTRODUCED BY SIMPKINS, ET AL.
REQUIRE LEGISLATURE TO FUND ACCREDITATION STANDARDS PRIOR TO ADOPTION

2/01	INTRODUCED
2/01	REFERRED TO EDUCATION & CULTURAL RESOURCES
2/02	FIRST READING
2/13	HEARING
2/18	TABLED IN COMMITTEE

HB 541 INTRODUCED BY KADAS, ET AL.
COMMUNITY REINVESTMENT ACT

2/01	INTRODUCED
2/01	REFERRED TO BUSINESS & ECONOMIC DEVELOPMENT
2/02	FIRST READING
2/06	FISCAL NOTE REQUESTED
2/11	FISCAL NOTE RECEIVED
2/14	HEARING
2/14	FISCAL NOTE PRINTED
2/15	TABLED IN COMMITTEE

HB 542 INTRODUCED BY KADAS
ALLOW COUNTY TO ESTABLISH COUNTYWIDE BURNING PERMIT PROGRAM

2/01	INTRODUCED
2/01	REFERRED TO LOCAL GOVERNMENT
2/02	FIRST READING
2/21	HEARING
2/21	TABLED IN COMMITTEE

HB 543 INTRODUCED BY DARKO, ET AL.
CLARIFYING THE ELIGIBILITY FOR THE CREDIT FOR EMPLOYER-PROVIDED DAY CARE

2/01	INTRODUCED		
2/01	REFERRED TO TAXATION		
2/02	FIRST READING		
2/15	HEARING		
3/05	COMMITTEE REPORT—BILL PASSED AS AMENDED		
3/09	2ND READING PASSED	94	0
3/12	3RD READING PASSED	98	0
	TRANSMITTED TO SENATE		
3/13	FIRST READING		
3/13	REFERRED TO TAXATION		
3/27	HEARING		
3/27	COMMITTEE REPORT—BILL CONCURRED		
4/03	2ND READING CONCURRED	50	0
4/04	3RD READING CONCURRED	49	1

MINUTES

MONTANA HOUSE OF REPRESENTATIVES
52nd LEGISLATURE - REGULAR SESSION

COMMITTEE ON NATURAL RESOURCES

Call to Order: By CHAIRPERSON BOB RANEY, on February 13, 1991, at 3:00 pm.

ROLL CALL

Members Present:

Bob Raney, Chairman (D)
Mark O'Keefe, Vice-Chairman (D)
Beverly Barnhart (D)
Vivian Brooke (D)
Ben Cohen (D)
Ed Dolezal (D)
Orval Ellison (R)
Russell Fagg (R)
Mike Foster (R)
Bob Gilbert (R)
David Hoffman (R)
Dick Knox (R)
Bruce Measure (D)
Tom Nelson (R)
Bob Ream (D)
Jim Southworth (D)
Howard Toole (D)
Dave Wanzenried (D)

Staff Present: Gail Kuntz, Environmental Quality Council
Paul Sihler, Environmental Quality Council
Lisa Fairman, Committee Secretary

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Announcements/Discussion:

HEARING ON HB 537

Presentation and Opening Statement by Sponsor:

REP. HAL HARPER, HD 44 - Helena, stated that Montana is in a semi-arid region. The state, as a whole, does not deal with drought in a timely manner nor does it mitigate damages. During the 1989 legislative session, a bill, similar in principle, was introduced. Since 1989, The Department of Natural Resources and Conservation (DNRC) held meetings and collected public input. The result is HB 537.

Questions From Committee Members:

REP. VIVIAN BROOKE stated the fiscal note does not reflect any travel expenses. She asked **REP. HARPER** if this will allow for fair representation, particularly of lower income groups. **REP. HARPER** responded that due to the importance of the issue, members will find a way to fund their travel. If it becomes apparent that such a problem exists then they will make sure money is available. **REP. BROOKE** asked what the rational is for having the military represented. **REP. HARPER** replied that the Division of Disaster and Emergency Services within the Department of Military Affairs responds to disasters such as droughts.

REP. DAVE WANZENRIED stated that it appears the Drought Committee doesn't allow for public input. **REP. HARPER** referred to page 1, line 24. He said that private individuals can be appointed to the committee and that the interests of the public would be represented.

Closing by Sponsor:

REP. HARPER asked the committee to support HB 537.

HEARING ON HB 539

Presentation and Opening Statement by Sponsor:

REP. FRITZ DAILY, HD 69 - Butte, stated that HB 539 deals with the quality of soil reclamation work occurring throughout the state. **REP. DAILY** distributed pictures of reclamation work in Butte-Silver Bow. He said the main purpose of the bill is to assure that local and state input in the Superfund decision making process is considered and to make the Environmental Protection Agency (EPA) more responsible for its actions. The bill attempts to ensure that the cleanup is done properly by establishing local and state cleanup requirements in addition to the federal requirements. The bill is intended to apply to both state and federal Superfund sites. The amendments clarify that it is applicable to federal sites. **EXHIBIT 2**

REP. DAILY stated the most important part of the bill is found on page 4, line 11. It requires approval of a consent degree by the local governing agency in the area where the site is located. This is important because the local citizens are the one's affected by the decisions and have to live with the results. **REP. DAILY** highlighted the other sections of the bill. He stated that the Superfund process is backwards. EPA and the potentially responsible party (PRP) make decisions and then have a public hearing. This bill will help to ensure input at the beginning of the decision making process.

Proponents' Testimony:
Jim Johnston, Director of Public Works in Butte-Silver Bow, supported HB 539. He stated that Butte-Silver Bow is one of the

largest Superfund sites in the United States. Local governments are responsible for maintenance and ramifications of the rehabilitation work done by EPA and the PRP, though they are not allowed any input into the planning of the rehab. The rehab work completed in Butte-Silver Bow has cause significant problems, especially to the street systems. A lack of bonding for rehab work could financially destroy communities if the community has extensive costs to fix the work. The people of Butte-Silver Bow are frustrated and dissatisfied. They have tried to have their input heard through numerous ways. Local government needs to be able to have a say in the rehab work that affects their community.

James Daily, Citizens of South Central Butte, stated that people live very close, within feet, of the clean-up area. He said he was here today because he felt that the clean-up was not properly done. The toxic wastes are removed from the top but not further down. Grass won't grow, erosion is excessive, culverts are clogging, and toxic substances and soils flow across the street. To ensure that rehab work is done properly, bonds should be imposed and citizens input be fairly considered.

Tom Eggert, Department of Health and Environmental Sciences (DHES), supported HB 539 with DHES amendments. He stated that HB 539 amends a bill that passed the previous session which DHES proposed. The previous bill enabled DHES to qualify for federal funding to perform some of the work at the site. This bill would amend it in such a manner that DHES may not qualify for the funds. It is unclear if the state can have control over sites that the federal government has the lead on. It is probable that this bill only affects those sites where the federal government is not involved. Of the 200 hazardous wastes sites in Montana, only eight are federal sites. To amend state law to incorporate those eight sites is foolish and would undermine all the positive aspects of the state law. If the provision of the bill that would require local approval of any remedial actions at sites is adopted, DHES would no longer receive any EPA funding. **Mr. Eggert** recommended amendments and urged their acceptance. **EXHIBIT 3**

Peter Nielsen, Clark Fork Coalition, supported HB 539. He strongly supported the concept of increased public involvement and authority in Superfund remediation decisions. Current remedial actions are less than desirable and less than permanent. Responsible parties should pay for this. The section amending 75-10-719 on page 8 is a very important concept. The language needs to be broadened to include other options besides bonding, such as trusts funds. If the responsible party realizes that they are responsible for all associated cleanup costs, the job may be better completed. Bonds, or other such assurances, should be mandatory, not optional. Input during the draft and final work plan stages should be included on page 4, section 75-10-713. Hearings should be liberally granted if so requested. There is a concern that the bill may not be applicable to federal work

sites. A solution to this may be to provide for public input on matters that require state concurrence. Applicability to federal sites may lead to disagreements with EPA and may result in a backlash effect. The repercussions need to be considered.

Mr. Nielsen stated that several areas in the bill need work. There is a need to clarify what "governing body in the affected area" entails and specifically, whether concurrence from all the governing bodies of affected areas is necessary. The process of how local governing bodies will be informed needs to be clarified. The veto power of the local governing agencies should be scrutinized. Local agencies may abuse it, may not be well informed and may want less cleanup. There should be an amendment to ensure that local governing bodies can't weaken clean-up processes.

Chris Kaufmann, Montana Environmental Information Center (MEIC), supported the concept of increased public input. Decisions need to be made by well informed people. She supported bonding concepts. **Ms. Kaufmann** shared previously stated concerns about local veto power. She stated that many communities may not be as knowledgeable as Butte-Silver Bow concerning issues affecting their community.

Opponents' Testimony:

Ward Shanahan, Atlantic Richfield Company, opposed HB 539. **EXHIBIT 4**

Leo Berry, Burlington Northern, opposed HB 539. He stated that he agreed with the testimonies of **Mr. Shanahan** and **Mr. Eggert.** He said it is nearly impossible to get local consensus about an issue. It is not appropriate for local governments to have power in this situation. Additionally, it is not appropriate for the penalty to include the costs incurred by the Department (referring to page 5, line 9). Posting of bonds and the proof of financial capability is acceptable. The bill is designed to solve one problem: Butte-Silver Bow. It will affect the whole state. Many of the provisions should not be applicable to other sites. **Mr. Berry** stated that he may be able to support the bill with **Mr. Eggert's** amendments.

Questions From Committee Members:

CHAIR RANEY asked **Mr. Eggert** to explain what would be left in the bill if his amendment was adopted. **Mr. Eggert** replied that the main change in the original bill is the addition of the performance bond requirement. **CHAIR RANEY** stated that the amendments eliminate public participation. The public desires more public participation and responses to their input. **Mr. Eggert** responded that as written the amendments do not address more public participation. DHES would support an amendment increasing public involvement and to require a response summary to the public comments.

CHAIR RANEY asked if DHES would provide the appropriate wording for that amendment. **Mr. Eggert** replied yes. **REP. REAM** asked if DHES would support the opportunity for public involvement during the work plan stage. **Mr. Eggert** said yes. **REP. REAM** inquired why EPA did not want the involvement of the local governing bodies. **Mr. Eggert** responded that EPA does. Federal regulations provide for public comment, which are used extensively in decision making. The conflict that occurred in Butte-Silver Bow involved pre-decision making planning. Public participation is not required during the pre-decision period.

Closing by Sponsor:

REP. DAILY stated this is a problem that affects more communities than Butte. He said it was stated that EPA may not be pleased if citizens start "forcing" them to be responsible and to involve the public. It is time to "force" them. It is our community and our health. Little is known about Butte-Silver Bow, the largest Superfund site in the world. EPA has not been responsible in dealing with the people of Butte. Local governments are elected by the citizens and should have input and veto power if they want it. If additional public involvement is not included in the bill, the bill is not worth passing.

CHAIR RANEY asked **REP. DAILY** if he would be willing to work on some of the problems with the bill and return with proposed amendments. **REP. DAILY** replied he would do so and would like to meet with those wishing to provide input.

HEARING ON HJR 17

Presentation and Opening Statement by Sponsor:

REP. DON LARSON, HD 65 - Seeley Lake, stated that HJR 17 is a request for the Environmental Quality Council (EQC), to conduct a lake shore development study. **EXHIBIT 5**

Proponents' Testimony:

Abe Horpstadt, Department of Health and Environmental Sciences (DHES), supported HJR 17. **EXHIBIT 6**

Chris Kaufmann, Montana Environmental Information Center (MEIC), supported HJR 17 for reasons previously stated.

Opponents' Testimony: none

Questions From Committee Members:

REP. ORVAL ELLISON asked **REP. LARSON** the reason that lakes are not included in the Stream Bed Act. **REP. LARSON** replied that he thought the reason was that there are too many jurisdictions involved. **REP. MARK O'KEEFE** asked **REP. BOB GILBERT** if EQC is overloaded with proposed studies.

EXHIBIT 2
DATE 2-13-91
HB 539

Amendments to House Bill No. 539
First Reading Copy

Requested by Rep. Daily
For the Committee on Natural Resources

Prepared by Gail Kuntz
February 9, 1991

1. Title, line 6.
Following: "ACT;"
Insert: "CLARIFYING THAT THE DEPARTMENT OF HEALTH AND ENVIRONMENTAL SCIENCES MAY TAKE REMEDIAL ACTION AT A SITE THAT IS SUBJECT TO THE FEDERAL COMPREHENSIVE ENVIRONMENTAL RESPONSE, COMPENSATION, AND LIABILITY ACT OF 1980;"

2. Title, line 12.
Following: "POSSIBLE;"
Strike: "AND"

3. Title, line 13.
Following: "75-10-704,"
Insert: "75-10-711,"

4. Title, line 14.
Following: "75-10-723, MCA"
Insert: "; AND PROVIDING A RETROACTIVE APPLICABILITY DATE"

5. Page 3, line 13.
Following: line 12
Insert: "**Section 2.** Section 75-10-711, MCA, is amended to read:

"75-10-711. Remedial action -- orders -- penalties -- judicial proceedings. (1) The department may take remedial action whenever:

(a) there has been a release or there is a substantial threat of a release into the environment that may present an imminent and substantial endangerment to the public health, welfare, or safety or the environment; and

(b) the appropriate remedial action will not be done properly and expeditiously by any person liable under 75-10-715(1).

(2) Whenever the department is authorized to act pursuant to subsection (1) or has reason to believe that a release has occurred or is about to occur, the department may undertake remedial action in the form of any investigation, monitoring, survey, testing, or other information-gathering as authorized by 75-10-707 that is necessary and appropriate to identify the existence, nature, origin, and extent of the release or the threat of release and the extent and imminence of the danger to the public health, safety, or welfare or the environment.

(3) Any person liable under 75-10-715(1) must take immediate action to contain, remove, and abate the release. Except as provided in 75-10-712, the department is authorized to draw upon the fund to take action under subsection (1) if it has

made diligent good faith efforts to determine the identity of the person or persons liable for the release or threatened release and:

(a) is unable to determine the identity of the liable person or persons in a manner consistent with the need to take timely remedial action; or

(b) the person or persons determined by the department to be liable under 75-10-715(1) have been informed in writing of the department's determination and have been requested by the department to take appropriate remedial action but are unable or unwilling to take action in a timely manner; and

(c) the written notice to each person informs him that if he is subsequently found liable pursuant to 75-10-715(1), he may be required to reimburse the fund for the state's remedial action costs and may be subject to penalties pursuant to 75-10-715(3).

(4) Whenever the department is authorized to act pursuant to subsection (1) or has reason to believe that a release that may pose an imminent and substantial threat to public health, safety, or welfare or the environment has occurred or is about to occur, it may issue to any person liable under 75-10-715(1) cease and desist, remedial, or other orders as may be necessary or appropriate to protect public health, safety, or welfare or the environment.

(5) A person who violates or fails or refuses to comply with an order issued under 75-10-707 or this section may, in an action brought to enforce the order, be assessed a civil penalty of not more than $10,000 for each day in which a violation occurs or a failure or refusal to comply continues. In determining the amount of any penalty assessed, the court may take into account the nature, circumstances, extent, and gravity of the noncompliance and, with respect to the person liable under 75-10-715(1), his ability to pay; any prior history of such violations; the degree of culpability; the economic benefit or savings, if any, resulting from the noncompliance; and any other matters as justice may require. Civil penalties collected under this subsection must be deposited into the environmental quality protection fund established in 75-10-704.

(6) A court has jurisdiction to review an order issued under 75-10-707 or this section only in the following actions:

(a) an action under 75-10-715 to recover remedial action costs or penalties or for contribution;

(b) an action to enforce an order issued under 75-10-707 or this section;

(c) an action to recover a civil penalty for violation of or failure to comply with an order issued under 75-10-707 or this section; or

(d) an action by a person to whom an order has been issued to determine the validity of the order, only if the person has been in compliance and continues in compliance with the order pending decision of the court.

(7) In considering objections raised in a judicial action regarding orders issued under this part, the court shall uphold and enforce an order issued by the department unless the objecting party can demonstrate, on the administrative record,

that the department's decision to issue the order was arbitrary and capricious or otherwise not in accordance with law.

(8) Instead of issuing a notification or an order under this section, the department may bring an action for legal or equitable relief in the district court of the county where the release or threatened release occurred or in the first judicial district as may be necessary to abate any imminent and substantial endangerment to the public health, safety, or welfare or the environment resulting from the release or threatened release.

(9) The department may take remedial action pursuant to subsection (1) at a site that is regulated under the federal Comprehensive Environmental Response, Compensation, and Liability Act of 1980, Public Law 96-510, if the department determines that remedial action is necessary to carry out the purposes of this part.""

Renumber: subsequent sections

6. Page 10, line 25.
Following: line 24
Insert: "NEW SECTION. **Section 8. {standard} Retroactive applicability.** [This act] applies retroactively, within the meaning of 1-2-109, to occurrences after June 30, 1985."

EXHIBIT 3
DATE 2-13-91
HB 539

DHES Testimony House Bill 539

Section 2

Public Participation Section: Section 713

- (1) (b) Preferably, this section should not be amended. The cost and formality of a hearing is often not warranted at many of the state sites. If it has to be amended, DHES recommends changing public **hearing** to public **meeting.**

- (1) (c) Preferably, this section should not be amended. If it has to be amended, then change to: consider and respond to **relevant** written or verbal comments properly submitted during the comment period or at the public **meeting.**

- (1) (d) Delete this amendment. This amendment likely will take the state out of any direct involvement in the Federal Superfund process because EPA will not give the Department funding if there is a very low likelihood that the state could get these local governing body approvals and therefore follow through with the consent agreements or administrative orders. Due to a variety of factors, it is often impossible to obtain the approval of the governing body. Two examples are the BN clean up in Livingston and Mill Creek near Anaconda. The Livingston City Council wrote to the Department requesting that the enforcement action be dropped. Obviously, no consent decree could have been entered into. The second example is the removal of the unincorporated town of Mill Creek directly east and downwind of the Anaconda smelter at Anaconda. After it was determined there was no way to clean up the area, it was decided that moving the residents was the only viable solution. It is doubtful the local government would have formally approved that order.

- (2) Change this amendment to: **The administrative record supporting the order or decree must contain the department's responsiveness summary prepared pursuant to 75-10-713 (1) (c).**

Section 3

Administrative Penalties: Section 714

- Section 714 (2) This amendment is unnecessary because these department costs are already covered in Section 722.

Section 4

Settlement Section 719

- 719 (5): Change "The department **shall** require" to "the department **may** require" and insert "operation and" between "long-term" and "maintenance." In addition, delete "performance bond"

and insert "a method of financial assurance satisfactory to the department including, but not limited to, any one, or any combination of the following: insurance, guarantee, performance or other surety bond, letter of credit, or qualification as a self insurer."

Section 5

Performance Bond Section: Section 721

- 721 - change of title - delete "performance bond" replace with "financial assurance".

- 721 (4) The proposed amendments require a performance bond from remedial action contractors or liable persons. Remedial action contractors should not be required to submit performance bonds relating to cleanup. They have no liability and this requirement would make it very difficult to find contractors.

In addition, the reference to performance bond should be expanded to include other types of financial assurance. Federal law provides guidance in CERCLA Section 108. CERCLA Section 108 requires financial assurance, albeit in a different context (this section talks about financial assurance of vessels on navigable waters). However, relevant language can be borrowed and inserted in state law.

Finally, financial assurance should only apply to the operation and maintenance of the remedial action. Many sites will be cleaned up by small businesses without adequate funds to both post a bond and cleanup the site. DHES believes that financial assurance, if required at all, should only be used to ensure the successful operation and maintenance of the remedial action.

DHES recommended amendments: delete "or a remedial action contractor" and delete "attainment of the degree...subsections (1) and (2)" and replace the latter with "the long-term operation and maintenance of the remedial action."

Also, delete "performance bond" and insert "a method of financial assurance satisfactory to the department including, but not limited to, any one, or any combination of the following: insurance, guarantee, performance or other surety bond, letter of credit, or qualification as a self insurer."

Section 6

Agreements to perform Remedial Action Section 723

- 723 (1): DHES recommends deleting these changes as the changes in 721 (4) and 719 (5) clearly describe those instances when financial assurance may be required.

EXHIBIT 4
DATE 2-13-91
HB 539

COMMENTS OF ATLANTIC RICHFIELD COMPANY
IN OPPOSITION TO HOUSE BILL NO. 539

February 13, 1991

Mr. Chairman and Members of the Committee:

For the record, my name is Ward Shanahan, I represent Atlantic Richfield Company, and I appear here today in opposition to House Bill 539 for several specific reasons. In particular:

1. The language on page 4, line 11, subsection (d) effectively provides a veto over the action of the Department of Health or any court which would approve a consent decree recommended by the Department. Atlantic Richfield has no objection to the participation of local government in a final approval process, but believes subsection (d) on page 4 needs amendment to remove the word "approval" and insert the word "comments" on line 11. In addition, what does the word "governing body" mean? Would this include all governing bodies? Would a county, a city, a school district, a weed control district, a drainage district, a volunteer fire department, or a special improvement district all exercise this veto power? It appears to us that this could happen, and that "governing bodies" should be replaced with "county commissioners" or some single entity. In addition, what does "affected area" mean? We believe this should be amended to delete "affected area" and insert "area in which the site is located."

2. While we have no general objection to Section 2(2) beginning at line 13 on page 4, we do believe that on lines 19 and 20 the words "reasons for overruling the considerations urged" should be stricken and replaced with the words "responses to the comments received" which better expresses the subject matter of that section as expressed in its title on page 3.

3. Section 4(5) beginning at 5 on page 8 and Section 5(4) beginning at line 18 on page 9 creates serious legal problems in application and interpretation. Following are some specific objections:

(a) These sections conflict with each other and duplicate and conflict with the Department's administrative order or judicial consent decree provided for in Section 2 of the Act.

(b) The order or consent decree provisions of the Act may specifically provide for financial contributions to be made by a responsible party during remediation as well as the way in which this will be paid for. To require a bond duplicates this and may may require an "offset" against monies paid under the order or decree to prevent a double penalty.

(c) If a bond is decided upon, there is no flexibility as to how the bond may be posted. For example, current bonding provisions in the mining acts allow the creation of trusts, the deposit of letters of credit, and the use of other financing devices which assist the responsible party in complying with the requirements of the Department. Is there any necessity here to deny the responsible party this flexibility in carrying out remediation?

4. Section 4, paragraph 5, and Section 5, paragraph 4 disagree with one another. One says "shall" and the other says "may." Both should say "may" in order to allow the Department some discretion.

5. In addition, who is the bond to be posted with? How is the bond to be released? How is the bond to be reconciled with the remediation order? For example, if the bond conflicts with the remediation order, is the responsible party to be charged <u>twice</u>, or will an offset be allowed?

6. What happens in the situation where the Department's order merely requires an investigation? Why should a bond be required in this circumstance? HB 539 fails to deal with this.

In summary, Mr. Chairman and Members of the Committee, Atlantic Richfield has no problem with the participation of local government in this process. However, HB 539 does not prescribe an orderly process for accomplishing this objective, and tends to confuse the procedure already established under the Montana Little Superfund Act, which may only multiply the legal problems and delay the accomplishment of the objectives which the sponsors are attempting to achieve.

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HB 539

(b) The order or consent decree provisions of the Act may specifically provide for financial contributions to be made by a responsible party during remediation as well as the way in which this will be paid for. To require a bond duplicates this and may may require an "offset" against monies paid under the order or decree to prevent a double penalty.

(c) If a bond is decided upon, there is no flexibility as to how the bond may be posted. For example, current bonding provisions in the mining acts allow the creation of trusts, the deposit of letters of credit, and the use of other financing devices which assist the responsible party in complying with the requirements of the Department. Is there any necessity here to deny the responsible party this flexibility in carrying out remediation?

4. Section 4, paragraph 5, and Section 5, paragraph 4 disagree with one another. One says "shall" and the other says "may." Both should say "may" in order to allow the Department some discretion.

5. In addition, who is the bond to be posted with? How is the bond to be released? How is the bond to be reconciled with the remediation order? For example, if the bond conflicts with the remediation order, is the responsible party to be charged <u>twice</u>, or will an offset be allowed?

6. What happens in the situation where the Department's order merely requires an investigation? Why should a bond be required in this circumstance? HB 539 fails to deal with this.

In summary, Mr. Chairman and Members of the Committee, Atlantic Richfield has no problem with the participation of local government in this process. However, HB 539 does not prescribe an orderly process for accomplishing this objective, and tends to confuse the procedure already established under the Montana Little Superfund Act, which may only multiply the legal problems and delay the accomplishment of the objectives which the sponsors are attempting to achieve.

We respectfully submit that if these problems cannot be solved, HB 539 should be given a "DO NOT PASS" recommendation. However, we stand ready to work with the sponsors in drafting the appropriate amendments to remove these problems.

Ward A. Shanahan
Atlantic Richfield Company
301 First Bank Building
P. O. Box 1715
Helena, MT 59624
(406) 442-8560

WAS/skh

8951W

HOUSE OF REPRESENTATIVES

VISITOR'S REGISTER

Natural Resources COMMITTEE BILL NO. 539

DATE 2-13-91 SPONSOR(S) Daily

PLEASE PRINT **PLEASE PRINT** **PLEASE PRINT**

NAME AND ADDRESS	REPRESENTING	BILL	OPPOSE	SUPPORT
WARD SHANAHAN	ATLANTIC RICHFIELD	539	AMEND X	
Roy Tilman	Montana Resources	539	X	
R M McCarthy	Butte-Silver Bow	539		✓
M. Shea	Butte-Silver Bow	539		✓
Jim Johnston	" "	539		✓
TOM EGGERT	DHES	539		AMENDMENT ✓
JAMES DAILY	Citizens South Central Bulk	539		✓
Peter Nielsen	Clark Fork Coalition	539		Amend ✓
Chris Kaufmann	MEIC	539		Amend ✓
Leo Berry	BN RR	539	amend	

PLEASE LEAVE PREPARED TESTIMONY WITH SECRETARY. WITNESS STATEMENT FORMS ARE AVAILABLE IF YOU CARE TO SUBMIT WRITTEN TESTIMONY.

J D Robb (Nora Roberts):

All titles except new ones : "Indulgence in Death" (due out Nov 2)

"Treachery in Death" (due out Feb 2, 2011)

James Grippando:

"When Darkness Falls"

"Lying with Strangers"

"Hear no Evil"

"Last to Die"

"Last Call"

"Born to Run"

"Intent to Kill"

"Money to Burn"

Books already read:

The Fern Michaels Sisterhood series except for new one due Sept 28th: "Cross Roads"

James Patterson's "Women's Murder Club" except number 9 "9th Judgment"

Vince Flynn:

"Term Limits"

"Transfer of Power"

"Protect & defend"

"Third Option"

"Extreme Measures"

"Act of Treason"

"Pursuit of Honor"

Julie Garwood:

"Heartbreaker"

"Mercy"

Peri O'Shausnessey : not "Dreams of the Dead" due out 7-1-11 (Nina Reilly pseudo?)

"Unlucky in Law"

Judith Krentz:

[some of these and the Flynn books she may not have read because they were the last batch I got her when she moved in with you. As soon as I get my other notebook, soon I hope!, I may be adding to this list....I'll let you know!]

"Sizzle & Burn"

"Running Hot"

"Lost & Found"

"All Night Long"

"Waiting Game"

"Smoke in Mirrors"

"Whites Lies"

"Truth or Dare"

J.A.Jance: not "Queen of the Night" (due out 7-7-10)

Fairstein, Linda:

"Death Dance"

"Hell Gate"

Kay Hooper:

"Touching Evil"

"Whisper of Evil"

"Stealing Shadows"

Tami Hoag"

"Still Waters"

"Dark Paradise"

A few Mary Balogh but except for "Simply Unforgettable" I can't remember the rest

MINUTES

MONTANA HOUSE OF REPRESENTATIVES
52nd LEGISLATURE - REGULAR SESSION

COMMITTEE ON NATURAL RESOURCES

Call to Order: By **CHAIRPERSON BOB RANEY**, on February 20, 1991, at 3:00 PM.

ROLL CALL

Members Present:

Bob Raney, Chairman (D)
Mark O'Keefe, Vice-Chairman (D)
Beverly Barnhart (D)
Vivian Brooke (D)
Ben Cohen (D)
Ed Dolezal (D)
Orval Ellison (R)
Russell Fagg (R)
Mike Foster (R)
Bob Gilbert (R)
David Hoffman (R)
Dick Knox (R)
Bruce Measure (D)
Tom Nelson (R)
Bob Ream (D)
Jim Southworth (D)
Howard Toole (D)
Dave Wanzenried (D)

Staff Present: Gail Kuntz, Environmental Quality Council
Paul Sihler, Environmental Quality Council
Michael Kakuk, Environmental Quality Council
Lisa Fairman, Committee Secretary

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

HEARING ON HJR 39

Presentation and Opening Statement by Sponsor:

REP. "FRITZ" DAILY, HD 69, Butte stated that HJR 39, as requested by the committee, addresses issues related to the Berkeley Pit and HB 380. All of the identified concerns have been addressed in the resolution. The resolution will be sent to Mr. Bill Riley of EPA, the state's Congressional delegation, and the Governor. An amendment, drafted by **Deborah Schmidt, Environmental Quality Council, (EQC)** addresses some technical problems. **EXHIBIT 1**

Vote: Motion to amend HB 351 carried 12-6 with Reps. Nelson, Hoffman, Gilbert, Foster, Knox, and Ellison voting no.

Motion/Vote: REP. COHEN MADE A SUBSTITUTION MOTION THAT HB 351 AS AMENDED DO PASS. Motion carried 11 to 7. **EXHIBIT 30**

EXECUTIVE ACTION ON HB 233

Motion/Vote: REP. FAGG MOVED THAT HB 233 DO PASS AS AMENDED. Motion failed 6 to 12. **EXHIBIT 31.**

Motion/Vote: REP. FAGG MOVED TO RECONSIDER THE ACTION ON HB 233 ON FRIDAY. Motion carried unanimously.

EXECUTIVE ACTION ON HB 539

Ms. Kuntz distributed copies of a marked up bill and the amendments. **EXHIBIT 32.** She stated that Rep. Daily has inserted financial assurance requirements in place of bonds to provide a wider range of options of how fiscal assurance can be made that clean up will be done. The original bill basically gave local governments veto authority over consent decrees, administrative orders. That has been changed to put a modification requirement for local government. The Department of Health and Environmental Sciences (DHES) has to receive comment from local governing bodies in areas where these work plans, consent decrees and administrative orders would apply. On page 4 language is reinstated that requires DHES to hold a public meeting. Amendments in subsection 2 bottom of page 4, say that when a final decision is made regarding the Department comments on an EPA workplan or the approval of an order, they have to have a response summary explaining what the Departments disposition was of the public comments.

Section 3 on page 5 is struck. DHES pointed out that this is defeating current law, that the Department already has the power to collect costs that have been incurred. Section 4 is amended on page 8 to put in place the financial assurance language. The same language goes into section 5. Section 7 provides retroactive applicability. Local government will have a more clear role in working with DHES.

Motion: REP. O'KEEFE MOVED HB 539 DO PASS.

Motion: REP. O'KEEFE moved to adopt the amendments.

Discussion:

REP. BROOKE asked if concerns of the Clark Fork Coalition were addressed. **Ms. Kuntz** said Kim Wilson was part of the group that met with the staff.

Vote: Motion to adopt the amendments carried unanimously.

Motion: **REP. O'KEEFE** moved to adopt the amendments.

Discussion:

REP. BROOKE asked if concerns of the Clark Fork Coalition were addressed. **Ms. Kuntz** said Kim Wilson was part of the group that met with the staff.

Vote: Motion to adopt the amendments carried unanimously.

Discussion:

REP. COHEN said ARCO testified they disliked the term "affected area" and wanted the words "area in which the site is located". He asked if anything was done about that. **Ms. Kuntz** replied that the wording had been changed.

Motion: **REP. O'KEEFE MADE A SUBSTITUTE MOTION THAT HB 539 AS AMENDED DO PASS.** Motion passes 13-5 with Reps. Ellison, Knox, Gilbert, Foster and Nelson voting no.

EXECUTIVE ACTION ON HB 630

Motion/Vote: **REP. O'KEEFE MOVED HB 630 DO PASS.** Motion carried unanimously.

ADJOURNMENT

Adjournment: 9:50 pm

BOB RANEY, Chair

LISA FAIRMAN, Secretary

BR/lf

12:45
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JDR

HOUSE STANDING COMMITTEE REPORT

February 21, 1991

Mr. Speaker: We, the committee on Natural Resources report that House Bill 539 (first reading copy -- white) do pass as amended .

Signed: _____
Bob Raney, Chairman

And, that such amendments read:

1. Title, line 6.
Following: "ACT;"
Strike: "REQUIRING APPROVAL OF A CONSENT DECREE BY THE LOCAL GOVERNING BODY;"
Insert: "CLARIFYING THAT THE DEPARTMENT OF HEALTH AND ENVIRONMENTAL SCIENCES MAY TAKE REMEDIAL ACTION AT A SITE THAT IS SUBJECT TO THE FEDERAL COMPREHENSIVE ENVIRONMENTAL RESPONSE, COMPENSATION, AND LIABILITY ACT OF 1980;"

2. Title, line 7.
Following: "FOR"
Strike: "PERFORMANCE BONDS"
Insert: "FINANCIAL ASSURANCE"

3. Title, line 10.
Following: "PUBLIC"
Insert: "MEETING OR"

4. Title, line 11.
Following: "PROPOSED"
Insert: "WORKPLAN,"
Following: "ORDER"
Insert: ","

5. Title, lines 11 and 12.
Following: "DECREE;" on line 11
Strike: remainder of lines 11 and 12 in their entirety

6. Title, line 13.
Following: "75-10-704,"
Insert: "75-10-711,"
Following: "75-10-713,"
Strike: "75-10-714,"

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7. Title, line 14.
Following: "75-10-719,"
Insert: "AND"
Following: "75-10-721,"
Strike: "AND 75-10-723,"
Following: "MCA"
Insert: "; AND PROVIDING A RETROACTIVE APPLICABILITY DATE"

8. Page 1, line 15.
Following: line 14
Insert: "STATEMENT OF INTENT
A statement of intent is required for this bill to provide guidance to the department of health and environmental sciences concerning rulemaking to establish the specific terms and conditions of financial assurance that a liable person is required to provide pursuant to 75-10-719 and 75-10-721. The department shall consult and to the greatest extent practicable rely upon financial assurance concepts and requirements contained in federal regulations that implement the federal Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended."

9. Page 2, line 14.
Following: "forfeited"
Strike: "performance bonds"
Insert: "financial assurance"

10. Page 3, line 13.
Following: line 12
Insert: "Section 2. Section 75-10-711, MCA, is amended to read:
"75-10-711. Remedial action -- orders -- penalties -- judicial proceedings. (1) The department may take remedial action whenever:
(a) there has been a release or there is a substantial threat of a release into the environment that may present an imminent and substantial endangerment to the public health, welfare, or safety or the environment; and
(b) the appropriate remedial action will not be done properly and expeditiously by any person liable under 75-10-715(1).
(2) Whenever the department is authorized to act pursuant to subsection (1) or has reason to believe that a release has occurred or is about to occur, the department may undertake remedial action in the form of any investigation, monitoring, survey, testing, or other information-gathering as authorized by 75-10-707 that is necessary and appropriate to identify the existence, nature, origin, and extent of the release or the threat of release and the extent and imminence of the danger to

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the public health, safety, or welfare or the environment.

(3) Any person liable under 75-10-715(1) must take immediate action to contain, remove, and abate the release. Except as provided in 75-10-712, the department is authorized to draw upon the fund to take action under subsection (1) if it has made diligent good faith efforts to determine the identity of the person or persons liable for the release or threatened release and:

(a) is unable to determine the identity of the liable person or persons in a manner consistent with the need to take timely remedial action; or

(b) the person or persons determined by the department to be liable under 75-10-715(1) have been informed in writing of the department's determination and have been requested by the department to take appropriate remedial action but are unable or unwilling to take action in a timely manner; and

(c) the written notice to each person informs him that if he is subsequently found liable pursuant to 75-10-715(1), he may be required to reimburse the fund for the state's remedial action costs and may be subject to penalties pursuant to 75-10-715(3).

(4) Whenever the department is authorized to act pursuant to subsection (1) or has reason to believe that a release that may pose an imminent and substantial threat to public health, safety, or welfare or the environment has occurred or is about to occur, it may issue to any person liable under 75-10-715(1) cease and desist, remedial, or other orders as may be necessary or appropriate to protect public health, safety, or welfare or the environment.

(5) A person who violates or fails or refuses to comply with an order issued under 75-10-707 or this section may, in an action brought to enforce the order, be assessed a civil penalty of not more than $10,000 for each day in which a violation occurs or a failure or refusal to comply continues. In determining the amount of any penalty assessed, the court may take into account the nature, circumstances, extent, and gravity of the noncompliance and, with respect to the person liable under 75-10-715(1), his ability to pay; any prior history of such violations; the degree of culpability; the economic benefit or savings, if any, resulting from the noncompliance; and any other matters as justice may require. Civil penalties collected under this subsection must be deposited into the environmental quality protection fund established in 75-10-704.

(6) A court has jurisdiction to review an order issued under 75-10-707 or this section only in the following actions:

(a) an action under 75-10-715 to recover remedial action costs or penalties or for contribution;

(b) an action to enforce an order issued under 75-10-707 or this section;

(c) an action to recover a civil penalty for violation of

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or failure to comply with an order issued under 75-10-707 or this section; or

(d) an action by a person to whom an order has been issued to determine the validity of the order, only if the person has been in compliance and continues in compliance with the order pending decision of the court.

(7) In considering objections raised in a judicial action regarding orders issued under this part, the court shall uphold and enforce an order issued by the department unless the objecting party can demonstrate, on the administrative record, that the department's decision to issue the order was arbitrary and capricious or otherwise not in accordance with law.

(8) Instead of issuing a notification or an order under this section, the department may bring an action for legal or equitable relief in the district court of the county where the release or threatened release occurred or in the first judicial district as may be necessary to abate any imminent and substantial endangerment to the public health, safety, or welfare or the environment resulting from the release or threatened release.

(9) The department may take remedial action pursuant to subsection (1) at a site that is regulated under the federal Comprehensive Environmental Response, Compensation, and Liability Act of 1980, Public Law 96-510, if the department determines that remedial action is necessary to carry out the purposes of this part.""

Renumber: subsequent sections

11. Page 3, line 14.
Following: "of"
Insert: "workplan,"
Following: "order"
Insert: ","

12. Page 3, line 15.
Following: "comments --"
Insert: "meeting --"

13. Page 3, lines 16 and 17.
Following: "before" on line 16
Strike: "final approval by"

14. Page 3, line 17.
Following: "department"
Strike: "of"
Insert: "submits comments to the U.S. environmental protection agency on a proposed workplan or approves"

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15. Page 3, line 18.
Following: "consent"
Insert: ","
Following: "75-10-711"
Insert: ","

16. Page 3, line 22.
Following: "proposed"
Insert: "workplan,"
Following: "order"
Insert: ","

17. Page 3, line 25.
Following: line 24
Insert: "(b) receive comments from the county commissioners and governing bodies of cities, towns, and consolidated local governments in whose geographical area of jurisdiction the proposed workplan, administrative order, or consent decree would apply;
Renumber: subsequent subsections

18. Page 4, line 3.
Following: "proposed"
Insert: "workplan,"
Following: "order"
Insert: ","

19. Page 4, line 5.
Following: "~~person),~~"
Insert: ", and upon written request by 10 or more persons or by a group having 10 or more members (but not including a liable person),"

20. Page 4, line 6.
Strike: "hearing"
Insert: "meeting"

21. Page 4, line 7.
Following: "proposed"
Insert: "workplan,"
Following: "order"
Insert: ","

12:45
2-21-91
TDB

22. Page 4, line 8.
Following: line 7
Insert: "(d) at the request of the county commissioners or the governing body of a city or town or of a consolidated local government within whose area of jurisdiction a remedial action site is located, conduct a public hearing; and"
Renumber: subsequent subsections

23. Page 4, line 8.
Following: "to"
Insert: "relevant"

24. Page 4, lines 10 through 12.
Following: "~~meeting~~" on line 10
Insert: "meeting or"
Following: "hearing" on line 10
Strike: remainder of line 10 through "area" on line 12

25. Page 4, line 13.
Following: "proposed"
Insert: "workplan,"

26. Page 4, line 14.
Following: "order"
Insert: ","

27. Page 4, line 16.
Following: line 15
Insert: "department's comments on the workplan or the"

28. Page 4, lines 16 through 22.
Following: "public." on line 16
Strike: "The" through "reasons." on line 22
Insert: "The administrative record supporting the department's comments on the workplan or the approved order or decree must contain the department's response summary prepared pursuant to subsection (1)(e)."

29. Page 4, line 23 through page 6, line 2.
Strike: section 3 in its entirety
Renumber: subsequent sections

30. Page 8, line 6.
Following: "department"
Strike: "shall"
Insert: "may"

2-21-91
JDR

31. Page 8, line 7.
Strike: "posting of a bond"
Insert: "liable person to provide financial assurance"

32. Page 8, line 8.
Following: "long-term"
Insert: "operation and"

33. Page 8, line 9.
Following: "site."
Insert: "The liable person shall provide the financial assurance by any one method or combination of methods satisfactory to the department, including but not limited to insurance, guarantee, performance or other surety bond, letter of credit, and qualification as a self-insurer."

34. Page 8, line 12.
Following: "exemption --"
Strike: "performance bond"
Insert: "financial assurance"

35. Page 9, line 18.
Following: "require"
Strike: "a performance bond"
Insert: "financial assurance"

36. Page 9, line 19.
Following: "person"
Strike: "or a remedial action contractor"

37. Page 9, lines 20 and 21.
Following: "ensure" on line 20
Strike: the remainder of lines 20 and 21
Insert: "the long-term operation and maintenance of the remedial action site. The liable person shall provide the financial assurance by any one method or combination of methods satisfactory to the department, including but not limited to insurance, guarantee,
performance or other surety bond, letter of credit, and qualification as a self-insurer."

38. Page 9, line 22 through page 10, line 18.
Strike: section 6 in its entirety
Renumber: subsequent section

12:45
2-21-91
SDB

39. Page 10, line 25.
Following: line 24
Insert: "NEW SECTION. Section 7. {standard} Retroactive applicability. [This act] applies retroactively, within the meaning of 1-2-109, to occurrences after June 30, 1985."

CLARIFYING THAT THE DEPARTMENT OF HEALTH AND ENVIRONMENTAL SCIENCES MAY TAKE REMEDIAL ACTION AT A SITE THAT IS SUBJECT TO THE FEDERAL COMPREHENSIVE ENVIRONMENTAL RESPONSE, COMPENSATION, AND LC 0208/01 LIABILITY ACT OF 1980;

HOUSE BILL NO. 539

INTRODUCED BY Neal Carey

A BILL FOR AN ACT ENTITLED: "AN ACT TO GENERALLY REVISE THE STATE COMPREHENSIVE ENVIRONMENTAL CLEANUP AND RESPONSIBILITY ACT; REQUIRING ~~APPROVAL OF A CONSENT DECREE BY THE~~ CONSULTATION WITH CERTAIN LOCAL GOVERNING ~~BODY~~ BODIES; PROVIDING FOR ~~PERFORMANCE BONDS~~ FINANCIAL ASSURANCE TO ENSURE COMPLIANCE WITH AGREEMENTS AND TO PROVIDE FOR LONG-TERM MAINTENANCE OF REMEDIAL ACTION SITES; REQUIRING A RESPONSE TO WRITTEN COMMENTS OR COMMENTS RECEIVED AT A PUBLIC HEARING ON A PROPOSED WORKPLAN, ORDER, OR DECREE; ~~CLARIFYING THAT ADMINISTRATIVE COSTS MUST BE RECOVERED WHEN POSSIBLE; AND~~ AMENDING SECTIONS 75-10-704, 75-10-713, ~~75-10-714,~~ 75-10-711, 75-10-719, AND 75-10-721, ~~AND 75-10-722,~~ MCA."

STATEMENT OF INTENT

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 75-10-704, MCA, is amended to read:

"75-10-704. Environmental quality protection fund. (1) There is created in the state special revenue fund an environmental quality protection fund to be administered as a revolving fund by the department. The department is authorized to expend amounts from the fund necessary to carry out the purposes of this part.

(2) The fund may be used by the department only to carry out the provisions of this part and for remedial actions taken by the department pursuant to this part in response to a release of hazardous or deleterious substances.

(3) The department shall:

(a) establish and implement a system for prioritizing sites for remedial action based on potential effects on human health and the environment; and

(b) investigate, negotiate, and take legal action, as appropriate, to identify responsible parties, to obtain the participation and financial contribution of responsible parties for the remedial action, to achieve remedial action, and to recover costs and damages incurred by the state.

(4) There must be deposited in the fund: financial assuran

(a) all penalties, forfeited ~~performance bonds~~, natural resource damages, and remedial action costs recovered pursuant to 75-10-715;

(b) all administrative penalties assessed pursuant to 75-10-714 and all civil penalties assessed pursuant to 75-10-711(5);

(c) funds appropriated to the fund by the legislature; and

(d) funds received from the interest income of the resource indemnity trust fund pursuant to 15-38-202.

(5) Whenever a legislative appropriation is insufficient to carry out the provisions of this part and

; AND PROVIDING A RETROACTIVE APPLICABILITY DATE

HOUSE OF REPRESENTATIVES
VISITOR REGISTER

Natural Resources COMMITTEE BILL NO. HJR 39

DATE 2-20-91 SPONSOR(S) Daily

PLEASE PRINT PLEASE PRINT PLEASE PRINT

NAME AND ADDRESS	REPRESENTING	SUPPORT	OPPOSE
ROBERT PAVLOVICH	BCTTF	✓	
Jon Sesso	Dail 7	—	
Mary Wilson	Clark Fork Coalition	✓	

PLEASE LEAVE PREPARED TESTIMONY WITH SECRETARY. WITNESS STATEMENT FORMS ARE AVAILABLE IF YOU CARE TO SUBMIT WRITTEN TESTIMONY.

MINUTES

MONTANA SENATE
52nd LEGISLATURE - REGULAR SESSION

COMMITTEE ON NATURAL RESOURCES

Call to Order: By Chairman Lawrence Stimatz, on March 11, 1991, at 3:00 p.m.

ROLL CALL

Members Present:

Lawrence Stimatz, Chairman (D)
Cecil Weeding, Vice Chairman (D)
John Jr. Anderson (R)
Esther Bengtson (D)
Don Bianchi (D)
Steve Doherty (D)
Lorents Grosfield (R)
Bob Hockett (D)
Thomas Keating (R)
John Jr. Kennedy (D)
Larry Tveit (R)

Members Excused: None

Staff Present: Gail Kuntz (EQC).

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Announcements/Discussion: None

HEARING ON HOUSE BILL 380

Presentation and Opening Statement by Sponsor:

Representative Fritz Daily, sponsor of the bill, stated that HB 380 deals with a very serious problem, the Berkeley Pit. HB 380 is composed of three main parts: It will become a prohibited activity in the state of Montana to allow contaminants of hazardous substances present at federally supervised sites; it instructs to Department of Health to establish and implement a system for prioritizing sites for remedial action based on potential effects on human health and the environment, and it increases the fine from ten thousand dollars per day to twenty five thousand dollars per day for a person or company who violates this law. The soul purpose for introducing this bill is to prevent the Environmental Protection Agency and the Atlantic Richfield Company from allowing the water in the Berkeley Pit to

state reserved all of its rights to pursue any actions pursuant to state law.

Sherry Purdy, representing Atlantic Richfield (ARCO), stated that the reservation of rights provision is pretty standardized. Under its federal surplus, states do have the ability to retain their rights to take action. However, it depends on what action you intent to take. The problem is, they are required under the consent order with the environmental protection agency to come in and study the situation before any action is taken. HB 380 forces them to go in and take immediate action before they know what the extent of the problem is.

Senator Grosfield asked what the rate of the water is coming into the Pit?

Floyd Bossard replied that the water is coming in at a rate of seven million gallons per day.

Closing by Sponsor:

Representative Daily closed by saying that the question that Senator Weeding asked was the most important question that was asked and that was "what happens if we determine a different level?". The EPA negotiated a level at five thousand four hundred and ten feet, two hundred feet above the contact point. They are saying that the water has the potential to discharge in significant quantities. This study cost five million four hundred thousand dollars. We got to this point, and we didn't even use it. Bill Williams stated that Representative Daily agreed to the amendments. He does not agree to any amendments. This sounds like a Butte problem, but it isn't. The may be the most serious problem that the state of Montana is facing. To solve this problem, we are talking about billions of dollars. This bill has no effect unless the water is discharged from the pit. HB 380 passed the House of Representatives 100 votes to 0. There is no question that the Berkeley Pit is an ecological time bomb. If this contaminated water gets into the aquifer surrounding Butte, it can never be fixed.

HEARING ON HOUSE BILL 539

Presentation and Opening Statement by Sponsor:

Representative Fritz Daily, sponsor of the bill, stated that this bill also has to deal with the Superfund process that is taking place in Butte. HB 539 will require the potential responsible parties and EPA to perform a number of state and local requirements in addition to the federal requirements before they clean up a contaminated waste site. The main purpose in introducing this legislation is to ensure that there will be local and state input into the Superfund process. It will also influence EPA to become more responsible in their decision making. Under the federal program, the potentially responsible parties are required to perform cleanup. He wants to require quality standards rather than the minimum standards now imposed by EPA. The Superfund process is backwards. Under the current

process, the potentially responsible parties and EPA negotiate and make a decision on how to clean up a Superfund site. After the decision is made a public hearing is held. What he is trying to do with this piece of legislation is to get some input on the front end of the decision making process.

Proponents' Testimony:

Jim Johnston, Director of Public Works for Butte Silverbow, stated it is imperative for local government to get more involved. There is a big difference between rural reclamation and urban reclamation.

Chris Kaufman, representing the Montana Environmental Information Center, stated the bill puts an emphasis on public participation and allows more public input into the process particularly in the area of work plans as well as consent decrees. It is important to continue to emphasize public participation in the Superfund cleanup sites. This bill gives the Department the ability to require financial assurance of the potentially responsible parties. This is a good change in the state's super fund law.

Dan Dennehy, Director of the Butte Silverbow City-County Health Department, stated the public participation in this process, especially with the local level people, is not so impaired that a solution can be worked out.

Opponents' Testimony:

Ward Shanahan, representing Atlantic Richfield, stated that it is necessary to make some consensus changes to this bill. He is not certain as to why the retroactive applicability date in section 7(B) is needed. The bill is made retroactive to occurrences after June 30, 1985. He didn't hear any testimony as to why that was necessary. He requested that the applicability date be changed on "passage and approval".

Questions From Committee Members:

Senator Grosfield asked about the retroactive applicability, and what types of activities would be affected?

Representative Daily stated that the intent is, if a consent decree or an order has been issued but has not yet been completed, then at that point the local government would have a way of getting that through the process.

Senator Tveit asked what is the definition of a liable person?

Representative Daily stated that a liable person is somebody who is potentially responsible at the site.

Gail Kuntz stated that was correct. The language in question is saying that the person, in effect, is the responsible party and would not be included amongst the number of people necessary to qualify to have a written request from the meeting or hearing.

Closing by Sponsor:

Representative Daily emphasized that the bill does effect places other than Butte. The EPA hasn't been responsible in dealing with the people of Butte and not only the people of Butte, but in the other areas of Montana in cleaning up contaminated waste sites. He is trying to involve the citizens of Montana in deciding the process. There are two hundred twenty federal and state Superfund sites in Montana. He believes in mining, and thinks that mining is good for Montana. When he looks at the mine waste dumps in Butte, he doesn't think that they are ugly.

HEARING ON HOUSE JOINT RESOLUTION 39

Presentation and Opening Statement by Sponsor:

Representative Fritz Daily, sponsor of the bill, stated that this resolution came about as a result of HB 380 concerning the Berkeley Pit. This is a committee resolution that was requested by the House Natural Resources Committee after listening to the statistics, facts, and concerns that he presented relating to the Berkeley Pit. This resolution is not a substitute for HB 380. HJR 39 is a supplement to encourage the Environmental Protection Agency to take the necessary steps to correct and address the issues in a timely and appropriate manner. This bill passed the House of Representatives on a vote of 100 to 0.

Proponents' Testimony:

Jim Johnston, Director of Public Works for Butte Silverbow, stated that they are in support of HJR 39.

Dan Dennehy, Director of City-County Department for Butte Silverbow, stated that they also are in support of HJR 39.

Opponents' Testimony:

Ward Shanahan, representing Atlantic Richfield, stated that he appears as an opponent for the purpose of offering some amendments. The amendments are primarily intended to get some of the facts straight as to the resolution.

Questions From Committee Members:

Senator Hockett commented that Representative Daily seems to be fairly harsh on the EPA. He asked if Representative Daily had checked beyond the EPA to another agency, such as commerce, for help?

Representative Daily stated that they have checked beyond the EPA for help. One of the issues that is raised in the section that has to be resolved is that they are encouraging the EPA to put more people in Butte. We have had the support of the congressional delegation. EPA has not been very responsible.

MINUTES

MONTANA SENATE
52nd LEGISLATURE - REGULAR SESSION

COMMITTEE ON NATURAL RESOURCES

[8 A.M.]

Call to Order: By Lawrence Stimatz, on March 27, 1991, at 3 p.m.

ROLL CALL

Members Present:

Lawrence Stimatz, Chairman (D)
Cecil Weeding, Vice Chairman (D)
John Jr. Anderson (R)
Esther Bengtson (D)
Don Bianchi (D)
Steve Doherty (D)
Lorents Grosfield (R)
Bob Hockett (D)
Thomas Keating (R)
John Jr. Kennedy (D)
Larry Tveit (R)

Members Excused: None.

Staff Present: Gail Kuntz (EQC).

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Announcements/Discussion: None.

EXECUTIVE ACTION ON HB 380

Motion:

Senator Keating made a motion that HB 380 BE NOT CONCURRED IN.

Discussion:

Chairmam Stimatz told the committee there had been an editorial in the Montana Standard on March 27 regarding the Berkeley Pit Chairman Stimatz stated that the history of the Environmental Protection Agency (EPA) in Butte in relation to the Berkeley Pit, had been that "they are a bunch of dwaddlers." Approximately 15 million dollars has been spent to date regarding the Pit, Stimatz said, and the quality of their study conducted continues to be

Amendments, Discussion, and Votes:

None.

Recommendation and Vote:

Motion by Senator Keating that HB 380 BE NOT CONCURRED IN passed. Chairman Stimatz and Senator Doherty voted against the motion.

EXECUTIVE ACTION ON HB 539

Motion:

Motion by Senator Keating that HB 539 BE NOT CONCURRED IN.

Discussion:

Senator Keating explained that the bill was designed in relation to the Berkeley Pit situation but "could impact other projects and other people" within the state.

Senator Bianchi asked for an explanation on HB 539.

Chairman Stimatz answered that HB 539 does not give additional power to DHES but does "prod them to exercise their discretion in a little quicker manner."

Senator Tveit said he did not understand who would be responsible financially for clean-up of the Pit.

Amendments, Discussion, and Votes:

There was no further discussion.

Recommendation and Vote:

Motion by Senator Keating that HB 539 BE NOT CONCURRED IN was tied with a 5 to 5 vote.

Senator Doherty voted against the motion by Senator Keating and made a motion that HB 539 BE CONCURRED IN.

Motion by Senator Doherty that HB 539 BE CONCURRED IN carried with Senators Anderson, Bengtson, Grosfield, Keating and Tveit opposing the motion.

EXECUTIVE ACTION ON HJR 39

Motion:

Motion by Senator Keating that HJR 39 BE CONCURRED IN.

Senator Keating made a substitute motion to move amendments 1-6

HOUSE BILL NO. 539

INTRODUCED BY DAILY, RANEY

A BILL FOR AN ACT ENTITLED: "AN ACT TO GENERALLY REVISE THE STATE COMPREHENSIVE ENVIRONMENTAL CLEANUP AND RESPONSIBILITY ACT; ~~REQUIRING APPROVAL OF A CONSENT DECREE BY THE LOCAL GOVERNING BODY;~~ CLARIFYING THAT THE DEPARTMENT OF HEALTH AND ENVIRONMENTAL SCIENCES MAY TAKE REMEDIAL ACTION AT A SITE THAT IS SUBJECT TO THE FEDERAL COMPREHENSIVE ENVIRONMENTAL RESPONSE, COMPENSATION, AND LIABILITY ACT OF 1980; PROVIDING FOR ~~PERFORMANCE BONDS~~ FINANCIAL ASSURANCE TO ENSURE COMPLIANCE WITH AGREEMENTS AND TO PROVIDE FOR LONG-TERM MAINTENANCE OF REMEDIAL ACTION SITES; REQUIRING A RESPONSE TO WRITTEN COMMENTS OR COMMENTS RECEIVED AT A PUBLIC MEETING OR HEARING ON A PROPOSED WORKPLAN, ORDER, OR DECREE; ~~CLARIFYING THAT ADMINISTRATIVE COSTS MUST BE RECOVERED WHEN POSSIBLE; AND~~ AMENDING SECTIONS 75-10-704, 75-10-711, 75-10-713, ~~75-10-714,~~ 75-10-719, AND 75-10-721, ~~AND 75-10-723,~~ MCA; AND PROVIDING A RETROACTIVE APPLICABILITY DATE."

STATEMENT OF INTENT

A STATEMENT OF INTENT IS REQUIRED FOR THIS BILL TO PROVIDE GUIDANCE TO THE DEPARTMENT OF HEALTH AND ENVIRONMENTAL SCIENCES CONCERNING RULEMAKING TO ESTABLISH THE SPECIFIC TERMS AND CONDITIONS OF FINANCIAL ASSURANCE THAT A LIABLE PERSON IS REQUIRED TO PROVIDE PURSUANT TO 75-10-719 AND 75-10-721. THE DEPARTMENT SHALL CONSULT AND TO THE GREATEST EXTENT PRACTICABLE RELY UPON FINANCIAL ASSURANCE CONCEPTS AND REQUIREMENTS CONTAINED IN FEDERAL REGULATIONS THAT IMPLEMENT THE FEDERAL COMPREHENSIVE ENVIRONMENTAL RESPONSE, COMPENSATION, AND LIABILITY ACT OF 1980, AS AMENDED.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 75-10-704, MCA, is amended to read:

"75-10-704. Environmental quality protection fund. (1) There is created in the state special revenue fund an environmental quality protection fund to be administered as a revolving fund by the department. The department is authorized to expend amounts from the fund necessary to carry out the purposes of this part.

(2) The fund may be used by the department only to carry out the provisions of this part and for remedial actions taken by the department pursuant to this part in response to a release of hazardous or deleterious substances.

(3) The department shall:

(a) establish and implement a system for prioritizing sites for remedial action based on potential effects on

human health and the environment; and

(b) investigate, negotiate, and take legal action, as appropriate, to identify responsible parties, to obtain the participation and financial contribution of responsible parties for the remedial action, to achieve remedial action, and to recover costs and damages incurred by the state.

(4) There must be deposited in the fund:

(a) all penalties, forfeited **performance----bonds** FINANCIAL ASSURANCE, natural resource damages, and remedial action costs recovered pursuant to 75-10-715;

(b) all administrative penalties assessed pursuant to 75-10-714 and all civil penalties assessed pursuant to 75-10-711(5);

(c) funds appropriated to the fund by the legislature; and

(d) funds received from the interest income of the resource indemnity trust fund pursuant to 15-38-202.

(5) Whenever a legislative appropriation is insufficient to carry out the provisions of this part and additional money remains in the fund, the department shall seek additional authority to spend money from the fund through the budget amendment process provided for in Title 17, chapter 7, part 4.

(6) Whenever the amount of money in the fund is insufficient to carry out remedial action, the department

may apply to the governor for a grant from the environmental contingency account established pursuant to 75-1-1101.

(7) The department shall submit to the legislature at the beginning of each regular session a complete financial report on the fund, including a description of all expenditures made since the preceding report."

SECTION 2. SECTION 75-10-711, MCA, IS AMENDED TO READ:

"**75-10-711. Remedial action -- orders -- penalties -- judicial proceedings.** (1) The department may take remedial action whenever:

(a) there has been a release or there is a substantial threat of a release into the environment that may present an imminent and substantial endangerment to the public health, welfare, or safety or the environment; and

(b) the appropriate remedial action will not be done properly and expeditiously by any person liable under 75-10-715(1).

(2) Whenever the department is authorized to act pursuant to subsection (1) or has reason to believe that a release has occurred or is about to occur, the department may undertake remedial action in the form of any investigation, monitoring, survey, testing, or other information-gathering as authorized by 75-10-707 that is necessary and appropriate to identify the existence, nature, origin, and extent of the release or the threat of release

and the extent and imminence of the danger to the public health, safety, or welfare or the environment.

(3) Any person liable under 75-10-715(1) must take immediate action to contain, remove, and abate the release. Except as provided in 75-10-712, the department is authorized to draw upon the fund to take action under subsection (1) if it has made diligent good faith efforts to determine the identity of the person or persons liable for the release or threatened release and:

(a) is unable to determine the identity of the liable person or persons in a manner consistent with the need to take timely remedial action; or

(b) the person or persons determined by the department to be liable under 75-10-715(1) have been informed in writing of the department's determination and have been requested by the department to take appropriate remedial action but are unable or unwilling to take action in a timely manner; and

(c) the written notice to each person informs him that if he is subsequently found liable pursuant to 75-10-715(1), he may be required to reimburse the fund for the state's remedial action costs and may be subject to penalties pursuant to 75-10-715(3).

(4) Whenever the department is authorized to act pursuant to subsection (1) or has reason to believe that a

release that may pose an imminent and substantial threat to public health, safety, or welfare or the environment has occurred or is about to occur, it may issue to any person liable under 75-10-715(1) cease and desist, remedial, or other orders as may be necessary or appropriate to protect public health, safety, or welfare or the environment.

(5) A person who violates or fails or refuses to comply with an order issued under 75-10-707 or this section may, in an action brought to enforce the order, be assessed a civil penalty of not more than $10,000 for each day in which a violation occurs or a failure or refusal to comply continues. In determining the amount of any penalty assessed, the court may take into account the nature, circumstances, extent, and gravity of the noncompliance and, with respect to the person liable under 75-10-715(1), his ability to pay; any prior history of such violations; the degree of culpability; the economic benefit or savings, if any, resulting from the noncompliance; and any other matters as justice may require. Civil penalties collected under this subsection must be deposited into the environmental quality protection fund established in 75-10-704.

(6) A court has jurisdiction to review an order issued under 75-10-707 or this section only in the following actions:

(a) an action under 75-10-715 to recover remedial

action costs or penalties or for contribution;

(b) an action to enforce an order issued under 75-10-707 or this section;

(c) an action to recover a civil penalty for violation of or failure to comply with an order issued under 75-10-707 or this section; or

(d) an action by a person to whom an order has been issued to determine the validity of the order, only if the person has been in compliance and continues in compliance with the order pending decision of the court.

(7) In considering objections raised in a judicial action regarding orders issued under this part, the court shall uphold and enforce an order issued by the department unless the objecting party can demonstrate, on the administrative record, that the department's decision to issue the order was arbitrary and capricious or otherwise not in accordance with law.

(8) Instead of issuing a notification or an order under this section, the department may bring an action for legal or equitable relief in the district court of the county where the release or threatened release occurred or in the first judicial district as may be necessary to abate any imminent and substantial endangerment to the public health, safety, or welfare or the environment resulting from the release or threatened release.

(9) The department may take remedial action pursuant to subsection (1) at a site that is regulated under the federal Comprehensive Environmental Response, Compensation, and Liability Act of 1980, Public Law 96-510, if the department determines that remedial action is necessary to carry out the purposes of this part."

Section 3. Section 75-10-713, MCA, is amended to read:

"**75-10-713. Public notice of WORKPLAN, administrative order, or consent decree -- written comments -- MEETING -- hearing -- response.** (1) Except as provided in 75-10-712, before ~~final approval by~~ the director of the department ~~of~~ SUBMITS COMMENTS TO THE U.S. ENVIRONMENTAL PROTECTION AGENCY ON A PROPOSED WORKPLAN OR APPROVES any administrative order on consent, issued pursuant to 75-10-711, or before judicial approval of a consent decree issued pursuant to this part, the department shall:

(a) publish a notice and brief description of the proposed WORKPLAN, order, or decree in a daily newspaper of general circulation in the area affected and make copies of the proposal available to the public;

(B) RECEIVE COMMENTS FROM THE COUNTY COMMISSIONERS AND GOVERNING BODIES OF CITIES, TOWNS, AND CONSOLIDATED LOCAL GOVERNMENTS IN WHOSE GEOGRAPHICAL AREA OF JURISDICTION THE PROPOSED WORKPLAN, ADMINISTRATIVE ORDER, OR CONSENT DECREE WOULD APPLY;

~~(b)~~(C) provide at least 30 days (or whatever additional time the department may in its discretion grant upon written request) for submission of written comments regarding the proposed WORKPLAN, order, or decree and~~,--upon--written request--by--10--or--more-persons-or-by-a-group-having-10-or more-members-(but-not-including-a-liable-person)~~, AND UPON WRITTEN REQUEST BY 10 OR MORE PERSONS OR BY A GROUP HAVING 10 OR MORE MEMBERS (BUT NOT INCLUDING A LIABLE PERSON), conduct a public ~~meeting~~ hearing MEETING at or near the facility for the purpose of receiving verbal comment regarding the proposed WORKPLAN, order, or decree; and

(D) AT THE REQUEST OF THE COUNTY COMMISSIONERS OR THE GOVERNING BODY OF A CITY OR TOWN OR OF A CONSOLIDATED LOCAL GOVERNMENT WITHIN WHOSE AREA OF JURISDICTION A REMEDIAL ACTION SITE IS LOCATED, CONDUCT A PUBLIC HEARING; AND

~~(c)~~(E) consider and respond to RELEVANT written or verbal comments properly submitted during the comment period or at the public ~~meeting~~ MEETING OR hearing~~;-and~~

~~(d)--obtain--the--approval--of-the-governing-body-in-the affected-area~~.

(2) Upon making a final decision regarding the proposed WORKPLAN, order, or decree, the department shall publish notice, as provided under subsection (1), and make copies of the DEPARTMENT'S COMMENTS ON THE WORKPLAN OR THE approved order or decree available to the public. ~~The-order-or-decree~~

~~must-contain-a-concise-statement-of--the--principal--reasons for--and-against-its-adoption;-incorporating-in-the-order-or decree-the-reasons-for-overruling-the--considerations--urged against--it;--if-no-written-or-verbal-comments-are-received; the-department--may--omit--the--statement--of--reasons;~~ THE ADMINISTRATIVE RECORD SUPPORTING THE DEPARTMENT'S COMMENTS ON THE WORKPLAN OR THE APPROVED ORDER OR DECREE MUST CONTAIN THE DEPARTMENT'S RESPONSE SUMMARY PREPARED PURSUANT TO SUBSECTION (1)(E)."

~~Section-3:--Section-75-10-714,-MCA,-is-amended-to-read:~~

~~"75-10-714:--Administrative-penalties:-(1)--In--lieu--of proceeding--under--75-10-711(5),--the--department-may-assess penalties-of-not-more-than--$1,000--per--day--per--violation against--a-person-liable-under-75-10-715(1)-for-a-release-or threat-of-release-who-has-failed-or-refused-to--comply--with an--order--issued-by-the-department-pursuant-to-75-10-711(4) or-against-a-person-who-has-failed-or-refused-to-comply-with an-order-issued-by-the-department-pursuant-to-75-10-707(5).~~

~~(2)--In-determining-the-amount-of-any--penalty--assessed pursuant--to--this--section,--the-department-shall-take-into account the---costs---it---has---incurred; the---nature, circumstances,-extent,-and--gravity--of--the--noncompliance; and,--with--respect-to-the-person-liable-under-75-10-715(1), his-ability-to-pay;-any-prior-history--of--such--violations; the--degree-of-culpability;-the-economic-benefit-or-savings,~~

~~if any, resulting from the noncompliance, and any other matters as justice may require.~~

~~(3) An administrative penalty may not be collected pursuant to this section unless the person charged with the noncompliance is given notice and opportunity for a hearing with respect to the noncompliance. The notice and opportunity for a hearing must conform to the requirements of Title 2, chapter 4, part 6.~~

~~(4) A person against whom a penalty is assessed under this section may obtain judicial review of the penalty as provided for in Title 2, chapter 4, part 7.~~

~~(5) Administrative penalties payable under this section must be deposited in the environmental quality protection fund established in 75-10-704.~~"

Section 4. Section 75-10-719, MCA, is amended to read:

"**75-10-719. Settlement -- bar to contribution liability.** (1) A person who has resolved his liability to the state arising under 75-10-715 or section 107(a)(1) through (a)(4) of CERCLA 42 U.S.C. 9607(a)(1) through (a)(4), in an administrative or judicially approved settlement is not liable for claims for contribution regarding matters addressed in the settlement. The settlement does not discharge any of the other potentially liable persons unless its terms provide a discharge. The terms of the settlement may reduce the potential liability

of the other potentially liable persons by the amount of the settlement.

(2) If the state has obtained less than complete relief from a person who has resolved his liability to the state in an administrative or judicially approved settlement, the state may bring an action against any other person who has not resolved his liability.

(3) A person who has resolved, in whole or in part, his liability to the state for the release or for remedial action costs in an administrative or judicially approved settlement may seek contribution from a person who is not party to a settlement referred to in subsection (1).

(4) Whenever practicable and in the public interest, as determined by the director of the department, the department may, as promptly as possible, reach a final settlement with a person liable under 75-10-715 in an administrative or civil action under 75-10-711 if ~~such~~ the settlement involves only a minor portion of the response costs at the facility concerned and, in the judgment of the department, the conditions in either of the following subsection (4)(a) or (4)(b) are met:

(a) Both of the following are minimal in comparison to other hazardous or deleterious substances at the facility:

(i) the amount of the hazardous or deleterious substances contributed by that person to the facility;

(ii) the toxic or other hazardous effects of the substances contributed by that person to the facility.

(b) (i) The person:

(A) is the owner of the real property on or in which the facility is located;

(B) did not conduct or permit the generation, transportation, storage, treatment, or disposal of any hazardous or deleterious substance at the facility; and

(C) did not contribute to the release or threat of release of a hazardous or deleterious substance at the facility through any action or omission.

(ii) This subsection (4)(b) does not apply if the person purchased the real property with actual or constructive knowledge that the property was used for the generation, transportation, storage, treatment, or disposal of any hazardous or deleterious substance.

(5) As part of an administrative or judicially approved settlement agreement, the department ~~shall~~ MAY require the ~~posting of a bond~~ LIABLE PERSON TO PROVIDE FINANCIAL ASSURANCE, in an amount determined by the department, to ensure the long-term OPERATION AND maintenance of the remedial action site. THE LIABLE PERSON SHALL PROVIDE THE FINANCIAL ASSURANCE BY ANY ONE METHOD OR COMBINATION OF METHODS SATISFACTORY TO THE DEPARTMENT, INCLUDING BUT NOT LIMITED TO INSURANCE, GUARANTEE, PERFORMANCE OR OTHER SURETY

BOND, LETTER OF CREDIT, AND QUALIFICATION AS A SELF-INSURER, OR OTHER DEMONSTRATION OF FINANCIAL CAPABILITY."

Section 5. Section 75-10-721, MCA, is amended to read:

"**75-10-721. Degree of cleanup required -- permit exemption -- performance--bond** FINANCIAL ASSURANCE. (1) A remedial action performed under this part must attain a degree of cleanup of the hazardous or deleterious substance and control of a threatened release or further release of that substance that assures present and future protection of public health, safety, and welfare and of the environment.

(2) In approving or carrying out remedial actions performed under this part, the department:

(a) shall require cleanup consistent with applicable state or federal environmental requirements, criteria, or limitations;

(b) shall consider and may require cleanup consistent with substantive state or federal environmental requirements, criteria, or limitations that are well-suited to the site conditions; and

(c) shall select remedial actions that, at a minimum, protect public health, safety, and welfare and the environment and that:

(i) use permanent solutions;

(ii) use alternative treatment technologies or resource recovery technologies to the maximum extent practicable; and

(iii) are cost-effective, taking into account the total short- and long-term costs of the actions, including the cost of operation and maintenance activities for the entire period during which the activities will be required.

(3) The department may exempt any portion of a remedial action that is conducted entirely on site from a state or local permit that would, in the absence of the remedial action, be required if the remedial action is carried out in accordance with the standards established under subsection (1) and this part.

(4) The department may require ~~a--performance--bond~~ FINANCIAL ASSURANCE from a liable person ~~or-a-remedial action--contractor~~ in an amount that the department determines will ensure ~~attainment-of-the-degree-of-cleanup required-by-subsections-(1)-and-(2);~~ THE LONG-TERM OPERATION AND MAINTENANCE OF THE REMEDIAL ACTION SITE. THE LIABLE PERSON SHALL PROVIDE THE FINANCIAL ASSURANCE BY ANY ONE METHOD OR COMBINATION OF METHODS SATISFACTORY TO THE DEPARTMENT, INCLUDING BUT NOT LIMITED TO INSURANCE, GUARANTEE, PERFORMANCE OR OTHER SURETY BOND, LETTER OF CREDIT, ~~AND~~ QUALIFICATION AS A SELF-INSURER, OR OTHER DEMONSTRATION OF FINANCIAL CAPABILITY."

~~Section-6.--Section-75-10-723,-MCA,-is-amended-to-read:~~

~~"75-10-723.--Agreements--to-perform-remedial-action.--(1) To--expedite--effective--remedial---actions---and---minimize litigation,--the--department,-in-its-discretion-and-whenever practicable-and-in-the-public-interest,--may--negotiate--and enter-into-an-agreement-with-any-person,-including-the-owner or--operator--of-the-facility-from-which-a-release-emanates, to-perform-a-remedial-action-if--the--department--determines that--the--action--will--be-properly-done-by-the-person.--The agreement-must-contain a-provision-requiring-the-posting--of a--performance--bond,--as--provided-in-75-10-719(5),-and-any terms-and-conditions-that-the-department-in--its--discretion determines-to-be-appropriate.~~

~~(2)--Whenever--the--department--enters-into-an-agreement under-this-section-for-remedial-action-or-for-assessment--or payment--of--natural-resource-damages,-the-agreement-must-be filed-in-an-appropriate-district-court-as-a--consent--decree and--must--be--available--for-public-comment-for-at-least-30 days.~~

~~(3)--A-decision-of-the-department-to-enter-into--or--not enter--into--agreements-under-this-section-is-not-subject-to judicial-review."~~

NEW SECTION. **Section 6. Severability.** If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

NEW SECTION. **SECTION 7.** RETROACTIVE APPLICABILITY. [THIS ACT] APPLIES RETROACTIVELY, WITHIN THE MEANING OF 1-2-109, TO OCCURRENCES AFTER JUNE 30, 1985.

-End-

GOVERNOR'S AMENDMENTS TO
HOUSE BILL 539
(REFERENCE COPY, AS AMENDED)
April 16, 1991

1. Title, line 15
Following: line 14
Strike: "OR HEARING"
Following: "PROPOSED"
Strike: "WORKPLAN,"

2. Page 8, line 8.
Following: "notice of"
Strike: "WORKPLAN,"
Insert: "remedial action,"

3. Page 8, line 9.
Following: "decree --"
Strike: "written"

4. Page 8, line 10.
Following: line 9
Strike: "hearing --"

5. Page 8, line 11.
Following: "by"
Insert: "final approval by"
Following: "of"
Insert: "of"

6. Page 8, lines 12 and 13.
Following: line 11
Strike: "SUBMITS COMMENTS TO THE U.S. ENVIRONMENTAL PROTECTION AGENCY ON A PROPOSED WORKPLAN OR APPROVES"

7. Page 8, line 18.
Following: "proposed"
Strike: "WORKPLAN,"
Following: "order"
Strike: ","

8. Page 8, lines 21 through 25.
Strike: subsection (B) in its entirety
Reletter: subsequent sections

9. Page 9, line 4.
Following: "proposed"
Strike: "WORKPLAN,"
Following: "order"
Strike: ","

10. Page 9, line 6.
Following: "person),"
Strike: ", AND"

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11. Page 9, line 11.
Following: "proposed"
Strike: "REMEDIAL"
Following: "action"
Strike: "."
Following: "and"
Insert: "(c)"

12. Page 9, lines 13 through 15.
Strike: subsection (D) in its entirety
Reletter: subsequent section

13. Page 9, line 16.
Following: "HEARING"
Strike: "OR hearing"
Following: "held"
Insert: "; and (d) The administrative record supporting the department's approved order or decree must contain the department's response summary prepared pursuant to subsection (1) (e)."

14. Page 9, line 21.
Following: "(2)"
Strike: "Upon"
Insert: "Except as provided in 75-10-712, upon"

15. Page 9, line 22.
Following: line 21
Strike: "WORKPLAN."
Insert: "remedial action,"

16. Page 9, line 24.
Strike: "DEPARTMENT'S COMMENTS ON THE WORKPLAN"
Insert: "final decision on"

17. Page 10, lines 3 through 9.
Following: "comments."
Strike "THE ADMINISTRATIVE RECORD SUPPORTING THE DEPARTMENT'S COMMENTS ON THE WORKPLAN OR THE APPROVED ORDER OR DECREE MUST CONTAIN THE DEPARTMENT'S RESPONSE SUMMARY PREPARED PURSUANT TO SUBSECTION (1) (E)."

18. Page 10.
Following: line 9
Insert: "(3) Except as provided in 75-10-712, the department shall: (a) notify the county commissioners and governing bodies of cities, towns, and consolidated local governments impacted by a proposed remedial action; and (b) at the request of the county commissioners or the governing body of a city or town or of a consolidated local government impacted by a remedial action, conduct a public meeting."

HOUSE BILL NO. 539

INTRODUCED BY DAILY, RANEY

A BILL FOR AN ACT ENTITLED: "AN ACT TO GENERALLY REVISE THE STATE COMPREHENSIVE ENVIRONMENTAL CLEANUP AND RESPONSIBILITY ACT; ~~REQUIRING APPROVAL OF A CONSENT DECREE BY THE LOCAL GOVERNING BODY;~~ CLARIFYING THAT THE DEPARTMENT OF HEALTH AND ENVIRONMENTAL SCIENCES MAY TAKE REMEDIAL ACTION AT A SITE THAT IS SUBJECT TO THE FEDERAL COMPREHENSIVE ENVIRONMENTAL RESPONSE, COMPENSATION, AND LIABILITY ACT OF 1980; PROVIDING FOR ~~PERFORMANCE BONDS~~ FINANCIAL ASSURANCE TO ENSURE COMPLIANCE WITH AGREEMENTS AND TO PROVIDE FOR LONG-TERM MAINTENANCE OF REMEDIAL ACTION SITES; REQUIRING A RESPONSE TO WRITTEN COMMENTS OR COMMENTS RECEIVED AT A PUBLIC MEETING ~~OR HEARING~~ ON A PROPOSED ~~WORKPLAN,~~ ORDER~~,~~ OR DECREE; ~~CLARIFYING THAT ADMINISTRATIVE COSTS MUST BE RECOVERED WHEN POSSIBLE; AND~~ AMENDING SECTIONS 75-10-704, 75-10-711, 75-10-713, ~~75-10-714,~~ 75-10-719, AND 75-10-721, ~~AND 75-10-723,~~ MCA; AND PROVIDING A RETROACTIVE APPLICABILITY DATE."

STATEMENT OF INTENT

A STATEMENT OF INTENT IS REQUIRED FOR THIS BILL TO PROVIDE GUIDANCE TO THE DEPARTMENT OF HEALTH AND ENVIRONMENTAL SCIENCES CONCERNING RULEMAKING TO ESTABLISH THE SPECIFIC TERMS AND CONDITIONS OF FINANCIAL ASSURANCE THAT A LIABLE PERSON IS REQUIRED TO PROVIDE PURSUANT TO 75-10-719 AND 75-10-721. THE DEPARTMENT SHALL CONSULT AND TO THE GREATEST EXTENT PRACTICABLE RELY UPON FINANCIAL ASSURANCE CONCEPTS AND REQUIREMENTS CONTAINED IN FEDERAL REGULATIONS THAT IMPLEMENT THE FEDERAL COMPREHENSIVE ENVIRONMENTAL RESPONSE, COMPENSATION, AND LIABILITY ACT OF 1980, AS AMENDED.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 75-10-704, MCA, is amended to read:

"**75-10-704. Environmental quality protection fund.** (1) There is created in the state special revenue fund an environmental quality protection fund to be administered as a revolving fund by the department. The department is authorized to expend amounts from the fund necessary to carry out the purposes of this part.

(2) The fund may be used by the department only to carry out the provisions of this part and for remedial actions taken by the department pursuant to this part in response to a release of hazardous or deleterious substances.

(3) The department shall:

(a) establish and implement a system for prioritizing sites for remedial action based on potential effects on

REFERENCE BILL: INCLUDES GOVERNOR'S AMENDMENTS DATED 4-16-91

human health and the environment; and

(b) investigate, negotiate, and take legal action, as appropriate, to identify responsible parties, to obtain the participation and financial contribution of responsible parties for the remedial action, to achieve remedial action, and to recover costs and damages incurred by the state.

(4) There must be deposited in the fund:

(a) all penalties, forfeited ~~performance----bonds~~ FINANCIAL ASSURANCE, natural resource damages, and remedial action costs recovered pursuant to 75-10-715;

(b) all administrative penalties assessed pursuant to 75-10-714 and all civil penalties assessed pursuant to 75-10-711(5);

(c) funds appropriated to the fund by the legislature; and

(d) funds received from the interest income of the resource indemnity trust fund pursuant to 15-38-202.

(5) Whenever a legislative appropriation is insufficient to carry out the provisions of this part and additional money remains in the fund, the department shall seek additional authority to spend money from the fund through the budget amendment process provided for in Title 17, chapter 7, part 4.

(6) Whenever the amount of money in the fund is insufficient to carry out remedial action, the department

may apply to the governor for a grant from the environmental contingency account established pursuant to 75-1-1101.

(7) The department shall submit to the legislature at the beginning of each regular session a complete financial report on the fund, including a description of all expenditures made since the preceding report."

SECTION 2. SECTION 75-10-711, MCA, IS AMENDED TO READ:

"**75-10-711. Remedial action -- orders -- penalties -- judicial proceedings.** (1) The department may take remedial action whenever:

(a) there has been a release or there is a substantial threat of a release into the environment that may present an imminent and substantial endangerment to the public health, welfare, or safety or the environment; and

(b) the appropriate remedial action will not be done properly and expeditiously by any person liable under 75-10-715(1).

(2) Whenever the department is authorized to act pursuant to subsection (1) or has reason to believe that a release has occurred or is about to occur, the department may undertake remedial action in the form of any investigation, monitoring, survey, testing, or other information-gathering as authorized by 75-10-707 that is necessary and appropriate to identify the existence, nature, origin, and extent of the release or the threat of release

and the extent and imminence of the danger to the public health, safety, or welfare or the environment.

(3) Any person liable under 75-10-715(1) must take immediate action to contain, remove, and abate the release. Except as provided in 75-10-712, the department is authorized to draw upon the fund to take action under subsection (1) if it has made diligent good faith efforts to determine the identity of the person or persons liable for the release or threatened release and:

(a) is unable to determine the identity of the liable person or persons in a manner consistent with the need to take timely remedial action; or

(b) the person or persons determined by the department to be liable under 75-10-715(1) have been informed in writing of the department's determination and have been requested by the department to take appropriate remedial action but are unable or unwilling to take action in a timely manner; and

(c) the written notice to each person informs him that if he is subsequently found liable pursuant to 75-10-715(1), he may be required to reimburse the fund for the state's remedial action costs and may be subject to penalties pursuant to 75-10-715(3).

(4) Whenever the department is authorized to act pursuant to subsection (1) or has reason to believe that a

release that may pose an imminent and substantial threat to public health, safety, or welfare or the environment has occurred or is about to occur, it may issue to any person liable under 75-10-715(1) cease and desist, remedial, or other orders as may be necessary or appropriate to protect public health, safety, or welfare or the environment.

(5) A person who violates or fails or refuses to comply with an order issued under 75-10-707 or this section may, in an action brought to enforce the order, be assessed a civil penalty of not more than $10,000 for each day in which a violation occurs or a failure or refusal to comply continues. In determining the amount of any penalty assessed, the court may take into account the nature, circumstances, extent, and gravity of the noncompliance and, with respect to the person liable under 75-10-715(1), his ability to pay; any prior history of such violations; the degree of culpability; the economic benefit or savings, if any, resulting from the noncompliance; and any other matters as justice may require. Civil penalties collected under this subsection must be deposited into the environmental quality protection fund established in 75-10-704.

(6) A court has jurisdiction to review an order issued under 75-10-707 or this section only in the following actions:

(a) an action under 75-10-715 to recover remedial

action costs or penalties or for contribution;

(b) an action to enforce an order issued under 75-10-707 or this section;

(c) an action to recover a civil penalty for violation of or failure to comply with an order issued under 75-10-707 or this section; or

(d) an action by a person to whom an order has been issued to determine the validity of the order, only if the person has been in compliance and continues in compliance with the order pending decision of the court.

(7) In considering objections raised in a judicial action regarding orders issued under this part, the court shall uphold and enforce an order issued by the department unless the objecting party can demonstrate, on the administrative record, that the department's decision to issue the order was arbitrary and capricious or otherwise not in accordance with law.

(8) Instead of issuing a notification or an order under this section, the department may bring an action for legal or equitable relief in the district court of the county where the release or threatened release occurred or in the first judicial district as may be necessary to abate any imminent and substantial endangerment to the public health, safety, or welfare or the environment resulting from the release or threatened release.

(9) The department may take remedial action pursuant to subsection (1) at a site that is regulated under the federal Comprehensive Environmental Response, Compensation, and Liability Act of 1980, Public Law 96-510, if the department determines that remedial action is necessary to carry out the purposes of this part."

Section 3. Section 75-10-713, MCA, is amended to read:

"**75-10-713. Public notice of ~~WORKPLAN,~~ REMEDIAL ACTION, administrative order, or consent decree -- ~~written~~ comments -- MEETING -- ~~hearing~~ response.** (1) (A) Except as provided in 75-10-712, before ~~final--approval--by~~ FINAL APPROVAL BY the director of the department ~~of~~ OF ~~SUBMITS COMMENTS--TO--THE--U.S.-ENVIRONMENTAL-PROTECTION-AGENCY-ON-A PROPOSED-WORKPLAN-OR-APPROVES~~ any administrative order on consent, issued pursuant to 75-10-711, or before judicial approval of a consent decree issued pursuant to this part, the department shall:

~~(a)~~(I) publish a notice and brief description of the proposed ~~WORKPLAN,~~ order, or decree in a daily newspaper of general circulation in the area affected and make copies of the proposal available to the public;

~~(B)--RECEIVE-COMMENTS-FROM-THE-COUNTY-COMMISSIONERS--AND GOVERNING--BODIES--OF--CITIES,-TOWNS,-AND-CONSOLIDATED-LOCAL GOVERNMENTS-IN-WHOSE-GEOGRAPHICAL-AREA-OF--JURISDICTION--THE PROPOSED--WORKPLAN,--ADMINISTRATIVE-ORDER,-OR-CONSENT-DECREE~~

~~WOULD APPLY;~~

~~(b)~~(II) provide at least 30 days (or whatever additional time the department may in its discretion grant upon written request) for submission of written comments regarding the proposed ~~WORKPLAN;~~ order; or decree and; ~~upon written request by 10 or more persons or by a group having 10 or more members (but not including a liable person);~~ AND UPON WRITTEN REQUEST BY 10 OR MORE PERSONS OR BY A GROUP HAVING 10 OR MORE MEMBERS (BUT NOT INCLUDING A LIABLE PERSON), conduct a public ~~meeting~~ hearing MEETING at or near the facility for the purpose of receiving verbal comment regarding the proposed ~~WORKPLAN;~~ order; or decree; ~~and~~ AND

~~(B) AT THE REQUEST OF THE COUNTY COMMISSIONERS OR THE GOVERNING BODY OF A CITY OR TOWN OR OF A CONSOLIDATED LOCAL GOVERNMENT WITHIN WHOSE AREA OR JURISDICTION A REMEDIAL ACTION SITE IS LOCATED; CONDUCT A PUBLIC HEARING; AND~~

~~(c)~~(III) consider and respond to RELEVANT written or verbal comments properly submitted during the comment period or at the public ~~meeting~~ MEETING OR ~~hearing; and~~

~~(d) obtain the approval of the governing body in the affected area~~.

(B) THE ADMINISTRATIVE RECORD SUPPORTING THE DEPARTMENT'S APPROVED ORDER OR DECREE MUST CONTAIN THE DEPARTMENT'S RESPONSE SUMMARY PREPARED PURSUANT TO SUBSECTION (1)(A)(III).

(2) ~~Upon~~ EXCEPT AS PROVIDED IN 75-10-712, UPON making a final decision regarding the proposed ~~WORKPLAN;~~ REMEDIAL ACTION, order, or decree, the department shall publish notice, as provided under subsection (1), and make copies of the ~~DEPARTMENT'S COMMENTS ON THE WORKPLAN~~ FINAL DECISION ON ~~OR~~ THE approved order or decree available to the public. ~~The order or decree must contain a concise statement of the principal reasons for and against its adoption, incorporating in the order or decree the reasons for overruling the considerations urged against it. If no written or verbal comments are received, the department may omit the statement of reasons. THE ADMINISTRATIVE RECORD SUPPORTING THE DEPARTMENT'S COMMENTS ON THE WORKPLAN OR THE APPROVED ORDER OR DECREE MUST CONTAIN THE DEPARTMENT'S RESPONSE SUMMARY PREPARED PURSUANT TO SUBSECTION (1)(E).~~

(3) EXCEPT AS PROVIDED IN 75-10-712, THE DEPARTMENT SHALL:

(A) NOTIFY THE COUNTY COMMISSIONERS AND GOVERNING BODIES OF CITIES, TOWNS, AND CONSOLIDATED LOCAL GOVERNMENTS IMPACTED BY A PROPOSED REMEDIAL ACTION; AND

(B) AT THE REQUEST OF THE COUNTY COMMISSIONERS OR THE GOVERNING BODY OF A CITY OR TOWN OR OF A CONSOLIDATED LOCAL GOVERNMENT IMPACTED BY A REMEDIAL ACTION, CONDUCT A PUBLIC MEETING."

~~Section 3. Section 75-10-714, MCA, is amended to read:~~

~~"75-10-714.--Administrative-penalties.-(1)--In--lieu--of proceeding--under--75-10-711(5),--the--department-may-assess penalties-of-not-more-than--$1,000--per--day--per--violation against--a-person-liable-under-75-10-715(1)-for-a-release-or threat-of-release-who-has-failed-or-refused-to--comply--with an--order--issued-by-the-department-pursuant-to-75-10-711(4) or-against-a-person-who-has-failed-or-refused-to-comply-with an-order-issued-by-the-department-pursuant-to-75-10-707(5).~~

~~(2)--In-determining-the-amount-of-any--penalty--assessed pursuant--to--this--section,--the-department-shall-take-into account the---costs---it---has---incurred, the---nature, circumstances,-extent,-and--gravity--of--the--noncompliance, and,--with--respect-to-the-person-liable-under-75-10-715(1), his-ability-to-pay,-any-prior-history--of--such--violations, the--degree-of-culpability,-the-economic-benefit-or-savings, if-any,-resulting-from--the--noncompliance,--and--any--other matters-as-justice-may-require.~~

~~(3)--An--administrative--penalty--may--not--be-collected pursuant-to-this-section-unless-the-person-charged-with--the noncompliance--is-given-notice-and-opportunity-for-a-hearing with--respect--to--the---noncompliance.---The---notice---and opportunity--for--a-hearing-must-conform-to-the-requirements of-Title-2,-chapter-4,-part-6.~~

~~(4)--A-person-against-whom-a-penalty-is--assessed--under this--section--may--obtain-judicial-review-of-the-penalty-as~~

~~provided-for-in-Title-2,-chapter-4,-part-7.~~

~~(5)--Administrative-penalties-payable-under-this-section must-be-deposited-in-the--environmental--quality--protection fund-established-in-75-10-704."~~

Section 4. Section 75-10-719, MCA, is amended to read:

"**75-10-719. Settlement -- bar to contribution liability.** (1) A person who has resolved his liability to the state arising under 75-10-715 or section 107(a)(1) through (a)(4) of CERCLA 42 U.S.C. 9607(a)(1) through (a)(4), in an administrative or judicially approved settlement is not liable for claims for contribution regarding matters addressed in the settlement. The settlement does not discharge any of the other potentially liable persons unless its terms provide a discharge. The terms of the settlement may reduce the potential liability of the other potentially liable persons by the amount of the settlement.

(2) If the state has obtained less than complete relief from a person who has resolved his liability to the state in an administrative or judicially approved settlement, the state may bring an action against any other person who has not resolved his liability.

(3) A person who has resolved, in whole or in part, his liability to the state for the release or for remedial action costs in an administrative or judicially approved

settlement may seek contribution from a person who is not party to a settlement referred to in subsection (1).

(4) Whenever practicable and in the public interest, as determined by the director of the department, the department may, as promptly as possible, reach a final settlement with a person liable under 75-10-715 in an administrative or civil action under 75-10-711 if ~~such~~ the settlement involves only a minor portion of the response costs at the facility concerned and, in the judgment of the department, the conditions in either of the following subsection (4)(a) or (4)(b) are met:

(a) Both of the following are minimal in comparison to other hazardous or deleterious substances at the facility:

(i) the amount of the hazardous or deleterious substances contributed by that person to the facility;

(ii) the toxic or other hazardous effects of the substances contributed by that person to the facility.

(b) (i) The person:

(A) is the owner of the real property on or in which the facility is located;

(B) did not conduct or permit the generation, transportation, storage, treatment, or disposal of any hazardous or deleterious substance at the facility; and

(C) did not contribute to the release or threat of release of a hazardous or deleterious substance at the

facility through any action or omission.

(ii) This subsection (4)(b) does not apply if the person purchased the real property with actual or constructive knowledge that the property was used for the generation, transportation, storage, treatment, or disposal of any hazardous or deleterious substance.

(5) As part of an administrative or judicially approved settlement agreement, the department ~~shall~~ MAY require the ~~posting of a bond~~ LIABLE PERSON TO PROVIDE FINANCIAL ASSURANCE, in an amount determined by the department, to ensure the long-term OPERATION AND maintenance of the remedial action site. THE LIABLE PERSON SHALL PROVIDE THE FINANCIAL ASSURANCE BY ANY ONE METHOD OR COMBINATION OF METHODS SATISFACTORY TO THE DEPARTMENT, INCLUDING BUT NOT LIMITED TO INSURANCE, GUARANTEE, PERFORMANCE OR OTHER SURETY BOND, LETTER OF CREDIT, ~~AND~~ QUALIFICATION AS A SELF-INSURER, OR OTHER DEMONSTRATION OF FINANCIAL CAPABILITY."

Section 5. Section 75-10-721, MCA, is amended to read:

"75-10-721. Degree of cleanup required -- permit exemption -- ~~performance bond~~ FINANCIAL ASSURANCE. (1) A remedial action performed under this part must attain a degree of cleanup of the hazardous or deleterious substance and control of a threatened release or further release of that substance that assures present and future protection of public health, safety, and welfare and of the environment.

(2) In approving or carrying out remedial actions performed under this part, the department:

(a) shall require cleanup consistent with applicable state or federal environmental requirements, criteria, or limitations;

(b) shall consider and may require cleanup consistent with substantive state or federal environmental requirements, criteria, or limitations that are well-suited to the site conditions; and

(c) shall select remedial actions that, at a minimum, protect public health, safety, and welfare and the environment and that:

(i) use permanent solutions;

(ii) use alternative treatment technologies or resource recovery technologies to the maximum extent practicable; and

(iii) are cost-effective, taking into account the total short- and long-term costs of the actions, including the cost of operation and maintenance activities for the entire period during which the activities will be required.

(3) The department may exempt any portion of a remedial action that is conducted entirely on site from a state or local permit that would, in the absence of the remedial action, be required if the remedial action is carried out in accordance with the standards established under subsection (1) and this part.

(4) The department may require ~~a--performance--bond~~ FINANCIAL ASSURANCE from a liable person ~~or-a-remedial action--contractor~~ in an amount that the department determines will ensure ~~attainment-of-the-degree-of-cleanup required-by-subsections-(1)-and-(2),~~ THE LONG-TERM OPERATION AND MAINTENANCE OF THE REMEDIAL ACTION SITE. THE LIABLE PERSON SHALL PROVIDE THE FINANCIAL ASSURANCE BY ANY ONE METHOD OR COMBINATION OF METHODS SATISFACTORY TO THE DEPARTMENT, INCLUDING BUT NOT LIMITED TO INSURANCE, GUARANTEE, PERFORMANCE OR OTHER SURETY BOND, LETTER OF CREDIT, AND QUALIFICATION AS A SELF-INSURER, OR OTHER DEMONSTRATION OF FINANCIAL CAPABILITY."

~~Section-6.--Section-75-10-723,-MCA,-is-amended-to-read:~~

~~"75-10-723.--Agreements--to-perform-remedial-action.--(1) To--expedite--effective--remedial---actions---and---minimize litigation,--the--department,-in-its-discretion-and-whenever practicable-and-in-the-public-interest,--may--negotiate--and enter-into-an-agreement-with-any-person,-including-the-owner or--operator--of-the-facility-from-which-a-release-emanates, to-perform-a-remedial-action-if--the--department--determines that--the--action--will--be-properly-done-by-the-person.--The agreement-must-contain a-provision-requiring-the-posting--of a--performance--bond,--as--provided-in-75-10-719(5),-and-any terms-and-conditions-that-the-department-in--its--discretion determines-to-be-appropriate.~~

~~(2)--Whenever--the--department--enters-into-an-agreement under-this-section-for-remedial-action-or-for-assessment--or payment--of--natural-resource-damages,-the-agreement-must-be filed-in-an-appropriate-district-court-as-a--consent--decree and--must--be--available--for-public-comment-for-at-least-30 days.~~

~~(3)--A-decision-of-the-department-to-enter-into--or--not enter--into--agreements-under-this-section-is-not-subject-to judicial-review.~~"

NEW SECTION. **Section 6.** Severability. If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

NEW SECTION. **SECTION 7.** RETROACTIVE APPLICABILITY. [THIS ACT] APPLIES RETROACTIVELY, WITHIN THE MEANING OF 1-2-109, TO OCCURRENCES AFTER JUNE 30, 1985.

-End-